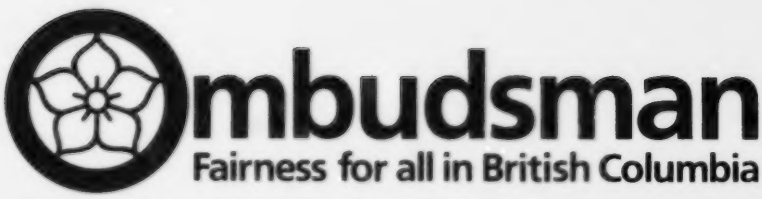

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To the Legislative Assembly

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April 1990

The Honourable Stephen Rogers
Speaker of the Legislative Assembly
Parliament Buildings
Victoria, B.C.
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Dear Mr. Speaker:

It is my pleasure to present the 1989 Report to the Legislative Assembly in accordance with section 30(1) of the Ombudsman Act. This Annual Report covers the period January 1 to December 31, 1989.

As an officer of the Legislative Assembly, I would be pleased to appear and report further on these matters, at the request of the Members.

Yours sincerely,

Stephen Owen

Stephen Owen
Ombudsman

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Highlights of the 1989 Annual Report

Statistics

- We received 12,936 complaints and inquiries during 1989. This represented a decrease of 8.8% from the previous year's number and brought the total number received since 1979 to 101,026.
- Of the 3,793 complaints that were investigated to conclusion, 61.1% were resolved, 38.5% were found to be not substantiated, and 0.3% were not resolved — i.e., an authority either refused to or was unable to comply with our recommendation for a resolution. Definitions of these and other terms used to describe the manner in which we close files are provided on page 32.
- The number of complaints against B.C. Hydro and Power Authority fell dramatically, by almost 50%, after the Authority implemented our recommendations that internal complaint investigation processes be established and that collection procedures be standardized.
- Our office made recommendations in 161 investigations for changes in practices, procedures, regulations and statutes.
- Most non-jurisdictional complaints had to do with a variety of marketplace matters. However, the body that was the object of the highest single number of complaints was the government of Canada, which is not among the constantly growing number of countries — including many in the Third World — that have appointed national Ombudsmen. We referred complainants with grievances against other provincial governments to Ombudsmen in those provinces.

Public reports

- Our office released five public reports in 1989. These included a report on our Principal Group investigation. This, by far the most time-consuming investigation conducted during the 10-year history of our office, was carried out without employing additional staff or seeking extra funding. The report's recommendation that $25 million in compensation be paid to investors who had suffered as a result of the Principal collapse was generally accepted by the B.C. government. (Page 27)
- Public Report No. 16 identified unfair procedures in the investigation of allegations of use of excessive force against municipal police officers. The release of the report was followed a few months later by the legislated removal of our office's authority to investigate complaints about the actions of municipal police forces. (Page 25)
- An investigation of a high incidence of self-abuse and attempted suicide at Willingdon Youth Detention Centre led to recommendations for changes that would reduce the likelihood of such incidents recurring. Implementation of many of these recommendations began promptly. (Page 25)
- Positive responses were received to all of the 17 recommendations made by our report on our investigation of complaints about the process of issuing permits for on-site septic systems. (Page 26)
- Allegations of favoured treatment of a forest company were concluded to be unfounded. A flexible application of rules governing forest licences was found to be the result of a policy of "sympathetic administration" that was instituted to help the forest industry cope with the recession of the 1980s. We found that suspicions of political favouritism were in part the result of poor communication between senior levels of the Ministry and District staff who had not been adequately informed of the reasons for allowing deviation from practices normally required of the industry. (Page 28)
- Several Ministries began taking initiatives in 1989 to address shortcomings in existing natural resource planning structures that were identified in our 1988 Annual Report and Public Report No. 15 on the rapidly developing aquaculture industry in B.C. (Page 24)

Case summaries

- A lengthy dispute about whether bison were wildlife or domestic animals was resolved when the Ministry of Environment and the owner of the bison reached a settlement in a court action after our office intervened. The dispute had arisen after the animals were imported from Alberta into B.C., where wild bi-

son had apparently been extinct for decades. (Page 62)

- A Chamber of Commerce complained to us that clearcutting in an interior valley could damage the tourism industry and that forest management planning did not adequately represent the interests of groups other than the forest industry. We mediated between the Chamber, a forest company and the Ministry of Forests, and the Ministry indicated that it intended to restructure the planning process in an effort to address concerns expressed by a variety of different interest groups. (Page 70)
- The Ministry of Economic Development agreed to honour a 12-year-old promise to provide financial assistance for the development of a piece of land to be used for car racing. The land had been transferred to the B.C. Custom Car Association by the Mission Development Corporation as part of the agreement to purchase another property owned by the BCCCA that was needed for industrial development. At the time of the purchase, the provincial government had provided a verbal promise to provide the assistance, but later reneged on the promise. The commitment to provide financial assistance was made early in 1990 and came 18 months after our office had recommended that the Ministry honour its promise. (Page 94)
- Social workers investigating reports of child neglect offered a variety of support services to the children's father. The father interpreted the investigation and offers as harassment, and was concerned that if he refused the offers he would be further harassed. The Ministry of Social Services and Housing agreed to provide to the father a full report of its findings in the investigation and to clarify the voluntary nature of the offered support. (Page 114)
- After investigating a complaint about an escape of prisoners from the Vancouver Island Regional Correctional Centre, we made observations to assist the Corrections Branch in its policy review regarding shift overlaps of correctional officers at the institution. (Page 131)
- A routine computer check by a police officer issuing a traffic ticket discovered that the Porsche he had stopped was a stolen car. This came as a great surprise not only to the current owner but also to the previous owner and the owner before that, who had bought the car from a rogue, had checked with the Motor Vehicle Department to ensure that the rogue owned the car, and complained to our office after he was sued by the second-to-last owner who was in turn being sued by the current owner. The Ministry of the Solicitor General, on our recommendation, agreed to pay the legal costs of all three owners embroiled in the lawsuit. Confused? See page 140 for a full description of this convoluted chain of events.
- A man's car was damaged when part of the blade fell off a snowplow while he was passing it. ICBC refused his claim because there was no evidence of negligence, but reviewed it again and paid the cost of repairs after the man complained to us. (Page 151)
- There's no such thing as a free lunch, and rarely such a thing as a free ferry ride. We did not substantiate the claim of a commuting student that the Ferry Corporation should give free rides to people commuting to college to better their education. (Page 157)
- Mediation by our office resulted in an agreement by the B.C. Railway Company to compensate a man for expenses he incurred in a lengthy but successful struggle to regain title to a property that had been expropriated by the government. (Page 170)

Other initiatives

- We hosted a customer service symposium to provide government agencies with advice that would help them set up fair procedures to respond to complaints from citizens. (Page 13)
- We began a major investigation into the administration of a residential youth care facility following the death of a resident in a fire. The investigation focused on the coordination of interministerial responsibilities in the provision of services to children and youth. (Page 21)
- At the request of the Provincial Apprenticeship Board, under the Ministry of Advanced Education and Job Training, we provided advice regarding the establishment of fair

appeal processes for persons with concerns about applications for certification to practice trades. (Page 23)

- We consulted with the Ministry of Social Services and Housing about inconsistent practices in the application of a revised policy on the provision of income assistance to minors. (Page 99)
- Following discussions between our office and ICBC about common causes of complaints, the Insurance (Motor Vehicle) Regulation was amended to provide for fairer policies regarding penalty point premiums, claim-rated scales, and compensation for cost of repairs. (Page 167)
- Following consultation between our office and the Workers' Compensation Board about means of expediting investigations of complaints to us about delays and inadequate communication, an efficient procedure was set up to provide for initial investigation of such complaints by WCB managers. (Page 171)
- The Criminal Injury Section of the Workers' Compensation Board, which administers the Criminal Injury Compensation Program, prepared a policy regarding the disclosure of information contained in its files after we had expressed concern about existing disclosure practices. (Pages 179-180)

Part I
Introduction

Current Issues

> The best government in the world, the best parliament, the best president cannot achieve much on their own. It would be also wrong to expect a remedy only from them. Freedom and democracy include participation and therefore responsibility of us all.

Czechoslovak playwright, president and democrat Vaclav Havel thus identified the essence of democracy in his New Year's address, January 1, 1990. The individual is the basic unit of democracy; and self-government means nothing if not that we, as individuals, must participate directly in the exercise of our democratic rights and responsibilities. Although the complexity of modern society requires that we delegate most public decisions and actions to politicians, civil servants, judges and others, this does not mean that we can abdicate our individual responsibility to hold these officials accountable for the fairness of their actions. However, individual will alone is not sufficient to achieve this participation.

The reality of the modern bureaucratic state is that meaningful participation by individuals in public decision-making will be frustrated without careful attention to the openness of the process. We must provide accessible, understandable and effective opportunities for individuals where bureaucratic decisions and actions affect fundamental interests in a direct way.

The Ombudsman's office has identified the basic elements of such participatory models through a series of systems studies published over the past three years and summarized in previous annual reports. Simply put, individuals must have access to public information and opportunities to be heard by public officials. The authority exercised by public officials, the standards to which they must perform and the criteria that they must apply should be clearly set out in legislation and policy and made comprehensible to the public in plain language. Where an individual's liberty, safety, health, livelihood, sustenance, shelter, property or other important interest may be significantly affected by an administrative decision of government, then that person should be given timely notice of the possibility; full disclosure of the information being considered; an opportunity to make representations and challenges on the matter; full reasons for the final decision; and, in some instances, recourse to an independent appeal process to have the merits of the decision reviewed.

In the absence of these basic participatory tools, individuals in society become complacent or cynical, either of which can cause instability in our democratic system. Conversely, the meaningful participation of citizens enables government to act on more complete information and with the consensus and respect of a wider spectrum of society.

On October 1, 1989, the B.C. Ombudsman's office completed its tenth year of operation. The large numbers of citizens bringing their concerns to this office and the high rate of resolution of these concerns by provincial government authorities indicate that the Ombudsman's office is fulfilling its primary function of empowering individuals to participate more effectively with government bureaucracies. In addition, the Ombudsman's office is increasingly contributing to the systemic sensitivity of public bureaucracies to issues of fairness to individuals through its independent consulting role to government. Quality control, internal complaint resolution and external appeal systems; service standards, private contract monitoring and enforcement; and interministerial co-ordination are all areas where the Ombudsman's office assists government to treat individuals more fairly through sound administrative policy. While the Ombudsman's office has initiated many of these systems studies as a result of its analysis of individual complaint trends, increasingly it is being requested by government to advise it on the development of fair administrative policies and practices. This is a healthy reflection of the respectful relationship that exists between government and the Ombudsman's office and of the genuine desire of senior public officials to be held accountable for fair and efficient service to the public.

Access to Information

One important aspect of the accountability of government through meaningful participation of individual citizens is reasonable access to information. As a general principle, public

information should be available to the public. Exceptions should be few in number and subject to discretionary disclosure if there is no reasonable expectation that harm would result. Trade secrets or confidential business information should be exempted from disclosure, except where specific information is severable, or when the public interest regarding health, safety or environmental protection overrides private commercial interest. Exceptions are also required in cases of criminal investigation, where disclosure would be contrary to law, or where the cabinet policy-making process is involved. Personal information, on the other hand, should be stored and used only when authorized and only when the individuals concerned know what information about them is being retained. They must have the opportunity to see and to correct the information on file about them, and this information, apart from limited exceptions dealing with police investigation and security, must be kept confidential.

These information practices are fundamental to fair administration, whether or not they are set out in specific information and privacy legislation, as they are in statutes of the federal government and several provincial governments. The Ombudsman's office is encouraged to note that the Premier's office and the Ministry of Attorney General are actively considering the introduction of such legislation in B.C. In New Brunswick and Manitoba, the Ombudsman's office is specifically named as having oversight responsibility for this legislation. In B.C., the Ombudsman's office regularly deals with these issues as part of its statutory responsibility to monitor the fairness of administrative practices. Even where information is open to public review, its accessibility is sometimes frustrated by high cost and remote location. While reasonable copying fees can be charged, these must not have the effect of making the right to access useless.

Service Excellence

Another important aspect of administrative fairness is the attitude of public institutions and public servants, including the Ombudsman's office, regarding the quality of service provided to individual members of the public.

In a truly competitive market, the quality of goods and services is largely regulated by the existence of alternatives to which the public can turn if it is not satisfied with the quality of others. For the most part, there are no alternatives to public services, whether delivered publicly or privately, to which the public can turn if it is dissatisfied. In addition to being provided through a monopoly, these public services are often essential and therefore cannot be simply done without. In this situation, it is imperative that attitudes and practices of the public service exhibit a "passion for service" equal or superior to those of the best competitive market companies, even in the absence of a commercial incentive.

Impediments to this service approach come not from the individual inadequacies of public servants, who are generally well motivated, fair-minded and diligent. Rather, the hierarchical nature of large public bureaucracies tends to focus the attention of public servants upwards towards meeting the broad public policy roles of government. Authority, direction, supervision and rewards of public servants formally come from above. While this reality cannot be altered, it is also essential that the attention of the public service be inverted towards the quality of the service to each individual member of the public that is affected by public decisions or actions.

This sensitivity must be demonstrated at every stage of the public service's interaction with individual members of the public. Telephone and office reception must clearly demonstrate the high regard in which the public is held and the sincere desire to provide fair and effective service. Every effort must be made to ensure that the needs or concerns of the citizen are fully understood by the public office and that the required service is either provided in the most efficient way or, if this is an impossibility, that the citizen is advised of the reasons for it and is properly referred to the appropriate agency that can help. Where an assignment is taken on, the citizen must be given a realistic expectation of the extent of the service and the time-frame involved. Where there are ongoing dealings with an individual, the government agency should manage the service by dealing with it in a timely way and, where delays are inevitable, should keep the individual regularly

advised of the progress and revised estimates for completion. When the matter is completed, full and complete reasons for the final decision or action should be provided to the individual member of the public so that, particularly where a decision goes contrary to the citizen's wishes, there is the opportunity to understand fully why what has happened has happened.

Integral to the whole relationship between a public agency and an individual member of the public should be courtesy, the obvious desire to serve and clear and regular communication. These administrative attitudes may well enhance the public's general respect for government more than any major policy decisions.

The Ombudsman's office has recently had discussions with officials in the Ministry of Government Management Services regarding its intention to commence a major campaign to instil this attitude of excellence and service throughout the public bureaucracy. We are encouraged by the apparent senior level support for this initiative and are hopeful that it will spread across other Ministries as well. We look forward to working with government to inspire, emphasize and reward this sensitivity for individual service and fairness throughout the ranks of government.

It has been noted above that public services, even if they are delivered privately, are not subject to market forces. When privately owned firms bid competitively for the right to provide a public service, what they acquire is non-competitive market power during the term of their service contract. An intriguing question, though, regarding public service delivery is the extent to which the threat of privatization of the delivery model induces public sector managers and employees to become more sensitive to individual fairness issues. In this sense, competitive market forces may indeed be having a positive impact on the quality of public services.

Customer Service Symposium

Our experience over the past three years has confirmed that significant reductions in the number of complaints to our office and to authorities can be achieved by (1) identifying and attempting to resolve the causes of frequently recurring complaints, and (2) determining why citizens find it necessary to complain to our office rather than obtaining resolutions by dealing directly with the authorities .

Many individuals who complain to our office have not pursued their concerns beyond the "front line" level of the authority and seem to be unaware of review, appeal and complaint procedures that may be available to them. In theory, the Ombudsman should not need to investigate complaints until all other reasonable avenues of redress have been exhausted. In practice, our office is often used as a source of information about authorities' programs and complaint procedures and, in some areas, has become an informal appeal route.

For these reasons we are encouraging authorities to review not only the adequacy of their own procedures for handling complaints and inquiries but also the manner in which the availability of those procedures is communicated to the public. We believe that most authorities have the capability of resolving the majority of complaints to their own and the complainants' satisfaction without Ombudsman intervention. When this occurs, an authority becomes more sensitive to the fairness issues involved than it does when it merely reacts to external investigation and recommendations.

To explore ways of assisting authorities in this regard, we invited the representatives of several of the larger authorities with which we deal to a meeting in September 1989 to discuss their experiences and views on approaches to customer service and complaint handling. The participating authorities included the Workers' Compensation Board, the Criminal Injury Section (administered by the Workers' Compensation Board), ICBC, B.C. Hydro, the Ministry of Social Services and Housing, and the Inspection and Standards Division of the Corrections Branch of the Ministry of Solicitor General. Complaints against these authorities account for approximately 70 percent of the jurisdictional complaints currently handled by the Ombudsman's office.

We discovered that the participants' complaint-handling systems varied widely, especially in terms of the degree of centralization and specialization of the service and the extent of the complaint handler's power to override

previous decisions. Nevertheless, there was a common concern about the quality of customer/client service.

Observations were made by a number of participants that an effective complaint-handling system should have the following elements:

— A complaint and inquiry procedure that is clearly identified and well understood by the staff of the authority.

— Clear communication of this procedure to citizens early in their dealings with the authority.

— Toll-free telephone access for complaints and inquiries.

— Assignment of personnel to handle complaints who are experienced specialists with the ability to answer questions and facilitate resolutions directly.

— Complaint investigations that are thorough, objective,and not limited to merely "backing up" previous decisions or ensuring compliance with the customary interpretation of the authority's existing laws, policies and practices.

— Centralized collection and analysis of complaint data to enable the identification and resolution of underlying causes of complaints, whether or not the complaint-handling process is centralized.

The meeting confirmed our belief in the advantages to be gained by communication among authorities about matters of procedural fairness. It underlined the importance of complaint-handling procedures in ensuring that each individual is treated fairly and in reassuring citizens that the public service appreciates the importance of addressing their concerns.

Initiatives taken by our office to facilitate communication among authorities are consistent with our belief in the benefits to be gained by a systemic approach to fairness-related issues. Authorities often have little opportunity to consult with one another on such issues. Our office is in the position to provide not only a forum for such consultation but also advice based on our experience in dealing with the principles of fairness across all provincial public administration.

Whistleblowing

An area of the quality of public service delivery that can be of wrenching concern to individual public servants as well as to senior government officials is the issue of "whistleblowing", generally understood to mean the practice of a public servant expressing concern or releasing confidential information outside of the normal internal bureaucratic channels. While such incidents can sometimes lead to the exposure and correction of improper and even criminal activity, they can also cause unfairness to individuals who are the subject of unwarranted allegations, can cause severe dysfunction within a public bureaucracy, and can lead to the use of the information for political or commercial purposes which may not necessarily be consistent with the public policy concern that inspired the original disclosure. Therefore it is important as a matter of fair and effective public administration for government to consider carefully the good intentions that will inevitably lead to some whistleblowing and to provide and encourage the use of a mechanism that can meet the public policy objective of honest and accountable government while avoiding the pitfalls of unfair allegations and improper uses of otherwise confidential information.

Some jurisdictions have passed legislation to authorize whistleblowing in specific situations and to provide protection from reprisals or disciplinary action for persons disclosing information in good faith and in the prescribed manner. In 1987 the B.C. government published a pamphlet entitled "Standards of Conduct for Public Service Employees" that gave some direction regarding confidentiality. Where employees have reason to believe that there exists an alleged contravention of the law, a waste of public funds or assets, or a danger to public health or safety, they are to bring the matter to the attention of their deputy minister, either directly or through normal ministry channels. Where this does not resolve the matter, they are advised that allegations of illegal activities should be referred to the police, waste of public funds should be referred to the Auditor General, and danger to public health and safety should be brought to the attention of health and public safety authorities, such as public health inspectors or fire departments.

It should also be well known within the public service that public employees have the right to report their concerns regarding improper public administration to the Ombudsman, notwithstanding their general duty of confidentiality. Such concerns can relate to decisions or actions of government that are thought to be unlawful, oppressive, improperly discriminatory, arbitrary, done for an improper purpose, negligent or otherwise unfair.

When such concerns are received by the Ombudsman, it will be carefully considered whether all normal internal channels of communication have been attempted or have been shown to be effectively blocked. If such channels are available and have not been used, then the complainant will be referred to them. If there is a clear barrier to internal resolution or a reasonable apprehension of reprisal for presenting the concern internally, then the Ombudsman's office will assist the complainant in having the concerns reviewed and, where substantiated, addressed by the government agency involved. This could take the form of assisting to communicate the concern around the real or perceived barrier directly to the deputy minister or other responsible senior government official.

The fear of public servants that they could be punished for complaining externally about what they believe to be internal improprieties is very real, whether or not there is a realistic chance of this happening. Where this fear is expressed to the Ombudsman's office, the matter will be investigated without disclosing the name of the complainant, so far as is possible. Where the nature of the concern unavoidably identifies the complainant, then the Ombudsman directly communicates the expressed concern of reprisal to the deputy minister or other most senior responsible official and receives assurances that this will not occur, so far as the concerns have been expressed in good faith. In these circumstances, any reprisal for a good faith expression of concern regarding unfair or otherwise improper public administration to the Ombudsman's office would be regarded as the gravest form of maladministration and would be reported to the cabinet, the legislature and the public, so far as necessary to correct this situation.

It should be emphasized that although concerns with respect to reprisals have been expressed to this office, senior government officials have been scrupulous in ensuring that this has neither occurred nor appeared to occur on those occasions where the Ombudsman's office has been involved.

Given these safeguards, it is the opinion of this office that it is inappropriate for a public official to disclose confidential information obtained in the course of employment to the press, to politicians or to other members of the public. As noted above, suspicion of illegal activity should be referred to the police, waste of public funds should be referred to the Auditor General and danger to public health and safety should be referred to the appropriate public safety authorities. In addition, any of these concerns and others can be reported in confidence to the Ombudsman, who will ensure that they are investigated independently and brought to the attention of the appropriate senior government officials for rectification or other action. In addition, if further disclosure is appropriate in the public interest, then the Ombudsman Act provides for this to happen in a controlled and considered manner.

Plain Language

Another important initiative of government concerning the meaningful participation of individual citizens in the self-governing process of a democratic society is the use of plain language. Government simply must speak to the public in a way that can be clearly understood if it is to be held accountable and to meet its obligation of fairness and openness. Statutes, regulations and all government policies, guidelines, criteria and public notices and communications must be set out in plain language if we are to meet our responsibilities as citizens to participate effectively within our democratic system.

In this regard, the government is to be commended for its recent initiative in the creation of a Plain Language Institute. The Institute will operate as an independent society to promote the use of plain language in government, business and the legal community in order to make the law, legal and commercial documents and correspondence, and legal information understandable to the public. It will

provide resource, consultation and promotion services for the expanded use of plain language in our society.

Natural Resource Dispute Resolution

Major initiatives reported on in the 1988 Annual Report included the work of the Ombudsman's office on models for integrated resource management and the consensual resolution of public interest disputes involving natural resources. The Ombudsman's office will be the co-host with the University of Victoria Institute for Dispute Resolution of a conference on natural resources dispute resolution in British Columbia in July, 1990.

The objective of the conference is to help to create an understanding among representatives of the native Indian, environmental, business, labour and government sectors in British Columbia of the interdependence of the legitimate interests involved in natural resource disputes and the urgent need for constructive and consensual approaches to resolving them. The conference discussions will be assisted by a number of nationally and internationally respected leaders in this field, who will be challenged to apply their experience and ideas to the British Columbia situation. It is expected that the conference will initiate an ongoing and formal forum for resolving such issues in British Columbia. Although it will be an invitational conference, a documentary video will be produced of the proceedings to be used for ongoing specialized and public education purposes.

In addition to this conference, the Ombudsman's office is regularly asked to become involved in attempting to resolve complex public interest disputes involving natural resources. While the office is not mandated nor does it have the resources to provide widespread mediation services, it can play an important initial role in the resolution of these disputes. Specifically, it can, from its independent position, apply its investigative expertise to identify all legitimately and significantly interested parties to the dispute, develop a common set of facts acceptable to all parties, and clearly set out the major issues to be resolved. This having been done, it becomes a much more straightforward matter for a round table or other dispute resolution process to be convened with a likelihood of successful resolution.

International Ombudsman Issues

The concept of the Ombudsman, from its classical legislative model to the many manifestations of executive, local government, specialized mandate and commercial Ombudsman offices, has taken firm hold throughout the world as an instrument of democratic accountability between the individual and the administrative state.

The International Bar Association provided an excellent summary of the common features of Ombudsmanship in this 1974 definition:

> An office provided for by the constitution or by action of the legislature or parliament and headed by an independent, high-level public official who is responsible to the legislature or parliament, who receives complaints from aggrieved persons against government agencies, officials and employees or who acts on his own motion and who has the power to investigate, recommend corrective action, and issue reports.

Ombudsman offices now exist at the local, state and national levels in more than 40 countries on six continents. Beyond the most simple and direct forms of democracy, considerable power must be entrusted to government officials in order for them to carry out the public purpose. The need for protection for the ordinary citizen against the possible abuse of this delegated power has been recognized for many centuries. The Control Yuan of ancient China, the Roman Tribune and the Islamic Office of Nazarul Mazalim are precedents. The Swedish institution of Justitieombudsman, created in 1809, inspired the concept and name for the most common modern model of Ombudsman office. This model was more sharply defined and settled with the creation of the Danish Ombudsman office in 1953 and the first English-speaking Ombudsman office in New Zealand in 1962.

While the term Ombudsman has been adopted into many languages, the concept has also inspired many other terms: Mediateur (France), Defensor del Pueblo (Spain and Puerto Rico), Protecteur du Citoyen (Quebec), Volksanwalt

(Austria), Parliamentary Commissioner for Administration (United Kingdom), Commissioner for the Enforcement of the Leadership Code (Tanzania), Provedor de Justica (Portugal), Wafaqi Mohtasib (Pakistan), Inspector General of Government (Uganda), Public Complaints Commission (Nigeria), Tanodbayan (the Philippines), Suruhanu (Guam), Petitions Committee (Federal Republic of Germany), Te Kaitiaki Mana Tangata (New Zealand-Maori), Commission for Civil Rights Protection (Poland) and Ayukta (India) demonstrate both the variety of language and the common ideas encompassed by the Ombudsman concept.

The widespread joint objective among Ombudsman offices is to seek satisfactory action for the individual against bureaucratic unfairness and to ensure that public administrators fulfil their obligations, while the office acts neither as agent for government nor as advocate for the complainant. It is to act at once as a civilizing and democratizing force in a complex and demanding modern society, enhancing fairness for individuals and confidence in public administration.

While generally pursuing common objectives, different Ombudsman offices demonstrate the flexibility of the concept by taking different institutional forms to suit the democratic structures and traditions peculiar to each jurisdiction. The classical Ombudsman or Parliamentary Commissioner appointed by and reporting to parliament might receive petitions directly from the public or only through elected legislators, and might report directly to the legislature and the public or through a select all-party committee. Scandinavian and Commonwealth Ombudsmen generally follow these models.

The Ombudsman institution might actually consist of a tribunal of officials representing the major political parties, as in Austria, or a Petitions Committee of the legislature itself, as in the Federal Republic of Germany.

While Ombudsmen are generally responsible to the legislative branch of government, they can also be appointed by and responsible to the president and executive branch. This raises interesting philosophical and practical questions as to the value of the Ombudsman as a means of strengthening the legislature against the often overwhelming influence of the executive; and conversely the value of drawing authority and influence from the effective source of power.

Ombudsmen generally hold only the power to recommend rather than to order change. Perhaps paradoxically, this inability to force change represents the central strength of the office and not its weakness. It requires that recommendations are based on a thorough investigation of all facts, scrupulous consideration of all perspectives, and vigorous analysis of all issues. Through this application of reason, the results are infinitely more powerful than those achieved through coercion. While a coercive process may cause reluctant change in a single decision or action, by definition it creates a loser who will be unlikely to embrace the recommendations in future actions. By contrast, a change resulting from a reasoning process alters a way of thinking, and the result endures to the benefit of potential complainants in the future. If genuine change is to take place as a result of Ombudsman action, the office must earn and maintain the respect of the public service through its patent reasonableness.

However, there are exceptions to this general practice of recommendation. For example, the French Mediateur can compel administrators to comply with the decision of a law court within a time he fixes himself; the Swedish and Finnish Ombudsmen supervise the courts; the Ontario Information and Privacy Commissioner has the power to order the production or otherwise of information held by government; and the Pakistani Wafaqi Mohtasib in some circumstances may award compensation to an aggrieved party for loss or damage suffered on account of maladministration.

Although the classical Ombudsman role is as a generalist, with jurisdiction over all matters of administration practised by a particular level of government, it is becoming increasingly common to appoint specialist Ombudsman offices with jurisdiction variously covering police, information and privacy practices, prisons, armed forces, hospitals and long-term care facilities, and children's rights. Commercial Ombudsmen in the insurance, building trades, banking and newspaper businesses have also been appointed in different countries.

Understandably, concern has been expressed about the potential public confusion arising from

the proliferation of Ombudsman-like offices which do not conform to the classical model. The Chief Coroner of B.C. has been referred to as the "Ombudsman for the Dead". New Zealand has recently passed legislation restricting the use of the word "Ombudsman" to the official legislative office. However, what we can all celebrate is any indication of the proliferation of the principle of administrative fairness to individual citizens.

What can be said of all these various Ombudsman offices is that they are responding to a common phenomenon - the potential in all bureaucracies for insensitivity towards individuals. Delay, indifference, rudeness, sloppiness, arbitrariness, oppressive behaviour, arrogance and even unlawfulness can be structural shortcomings of all hierarchical institutions in which employees receive their directions, authority and rewards from above. Fundamental to the Ombudsman concept is the ability to invert bureaucratic attention towards the individual citizens who are intended to be served.

One of the most dramatic and potentially heraldic incidents in international Ombudsmanship was the appointment of a Polish Ombudsman, effective January 1, 1988. The initiative was undertaken in 1983 by a non-party movement grouping public organizations and persons striving for state and social revival. In consequence, a bill was prepared and made available for wide public discussion and critical comment. The Act of 1987 provided for the Polish Sejm (Parliament) to appoint a Commissioner for Civil Rights Protection, or Ombudsman, for a term of four years. The Commissioner is independent of other state bodies and responsible only to the Sejm.

That the Polish Ombudsman office originated from outside the Communist Party and preceded the creation of a multi-party form of government demonstrates the powerful democratic force of the office, both as a symbol and as a practical expression of individual rights. There is great potential for the Polish experience to be followed elsewhere in Eastern Europe.

A significant movement working for the establishment of the Ombudsman institution in Latin America is the Instituto Latino American Del "Ombudsman". Headquartered in Caracas, Venezuela, its objective is to form chapters in each Latin American country involving constitutional, administrative and international lawyers working to promote the formation of Ombudsman offices. To date, chapters are active in Argentina, Uruguay, Chile, Venezuela and Costa Rica, and others are being started in Brazil, Paraguay, Ecuador, Bolivia, Panama, Honduras and Guatemala. The Institute identifies the need for Ombudsman offices to defend the rights of citizens facing the growing powers of government institutions by strengthening their participation in the management of public matters and giving the democratic system the coherence it needs to survive difficult social and economic times. Buenos Aires has already appointed a municipal Ombudsman, and Costa Rica and Argentina are considering the idea at the national level.

Tanzania and Uganda are enthusiastically promoting the Ombudsman concept in East Africa, while also strongly emphasizing the need for the international community to appreciate the different leadership traditions in Africa and the need for the establishment of appropriately adapted Ombudsman models that are not necessarily patterned after those which developed in Europe.

The Canadian Ombudsmen, at their annual meeting held in Quebec City in October, 1989, approved plans to join with the Canadian government, the Canadian International Development Agency (CIDA) and the International Ombudsman Institute to promote the adoption of the Ombudsman concept in francophone Africa. Financial and technical support for this initiative from Canada was seen as an important extension of the long-standing political, economic and social relationship with francophone countries and the official language status of French in Canada.

Another significant addition to the international Ombudsman community was the appointment in 1988 of an Ombudsman for Hong Kong, an office that "Justice", the British Section of the International Commission of Jurors, had been working to create since 1969.

Surprisingly, the concept of Ombudsmanship has not taken firm root in the United States, in contrast to most of the democratic world. There is no federal Ombudsman and there are only four state Ombudsmen (Alaska, Hawaii, Iowa

and Nebraska). However, a growing number of federal agencies, including the Postal Service and Internal Revenue, have Ombudsman-like offices to monitor the fair treatment of citizens. As well, there has been a healthy proliferation of local government and specialized Ombudsman offices dealing with long term care, education systems, hospitals, children's rights and prisons, among other things. This recent expansion of the institution suggests that American society may soon embrace the Ombudsman concept with the traditional enthusiasm it displays for democratic and individual liberty issues.

Administrative Negligence and Ex Gratia Payments

Most Ombudsman legislation identifies negligence as well as unlawfulness as an element of maladministration to be identified and rectified by the Ombudsman office. These categories, while not mutually exclusive, are not always identical either, and this fact can have major consequences on government's willingness to pay compensation for damages shown to be caused by actions of public servants that are negligent but not unlawful in the sense that they give rise to a private law duty of care and therefore to legal liability for damages.

This concept of "administrative negligence" describes acts, omissions or decisions of public officials which fail to meet the standard of care that a reasonable person would recognize to be required of them. This is a common-sense test, although in many situations explicit statutory responsibilities will provide a clear indication of the appropriate standard to apply.

An Ombudsman's finding of administrative negligence and a recommendation for compensation to remedy the harm caused by it are not necessarily based on the same findings as a court would require to establish legal liability. An Ombudsman's authority to recommend remedial action derives from the premise that a fair remedy with respect to administrative wrongdoing is not always available at law. This is a premise that is fundamental to the creation of the institution of the Ombudsman as an entity separate from the formal justice system.

To a large extent, the office of the Ombudsman is established by legislatures in recognition of the inadequacy of the courts to deal with many injustices arising from the nature of modern bureaucracy. To quote Chief Justice Dickson from a unanimous decision of the Supreme Court of Canada:

> The limitations of courts are also well known. Litigation can be costly and slow. Only the most serious cases of administrative abuse are therefore likely to find their way into the courts. More importantly, there is simply no remedy at law available in a great many cases.
>
> Read as a whole, the Ombudsman Act of British Columbia provides an efficient procedure through which complaints may be investigated, bureaucratic errors and abuses brought to light and corrective action initiated. It represents the paradigm of remedial legislation. It should therefore receive a broad, purposive interpretation consistent with the unique role the Ombudsman is intended to fulfil. (*B.C.D.C. v. Friedmann* [1984] 2 S.C.R. 442)

Many Ombudsman Acts authorize the Ombudsman to conclude that public officials, in the administration of their duties, have acted negligently and, where this has occurred, to recommend to government the means by which the harm caused by such failure should be remedied. This authority is independent of the existence of a private law remedy through the courts.

The strict legal principles by which the courts determine the liability of public officials for the consequences of their negligence are complex and uncertain. Although a strong legal argument might be made that government is legally liable to citizens for losses resulting from the administrative negligence of its officials in a particular case, such liability would not be certain and might only be settled by a decision of the final court of appeal, which could take many years at vast public and private expense.

In many situations, the law does not apply to the actions of public administrators in the same manner as it applies to those of private citizens. The Law Reform Commission of Canada has recently commented on this dilemma:

> Concepts and principles which are appropriate to private law are often ill-suited to deal with problems arising in the public law context. Tort liability of the Crown, for instance, is addressed in the same terms as are used to determine

liability between private parties. The use of private law offers many opportunities for the State to escape liability which we might, as a matter of public policy, want it to bear.

As well, given the fundamental economic inequality between the parties and the extraordinary procedural privileges enjoyed by the Administration, the procedure which governs curial proceedings in contentious matters is manifestly ill-adapted to the special nature of litigation between the individual and the Administration.

One non-curial external control could be provided by Ombudsmen. This institution is non-adversarial in nature and exemplifies the diverse avenues of redress for individuals, which, although non-judicial, can and do enjoy a high degree of independence. (*Towards a Modern Federal Administration*, 1987).

Like the Supreme Court of Canada, the Law Reform Commission points out the effectiveness of an Ombudsman office in identifying error and resulting harm and in recommending a remedy in situations where there may simply never be a fair judicial resolution of the harm caused by bureaucratic error.

The fact that the application of strict legal principles and processes may not provide a remedy in all cases does not mean that government can ignore its responsibility to remedy the consequences of the negligence of its own officials. It has a duty to treat people fairly, not simply to meet technical legal standards, and when individuals have been harmed through the clear failure of public officials to act reasonably in their administrative duties, government should act quickly to remedy that harm.

Where an Ombudsman's recommendation for compensation is made to rectify the damage caused by administrative negligence, there must be legislative authority for government to make the payment. Where the aggrieved party's claim gives rise to the potential legal liability of government, the Attorney General could typically settle the matter through the payment of compensation under the authority of a Crown Proceeding Act or like statute. However, where no such potential legal liability exists or is admitted, compensation would have to be by way of an ex gratia payment, and for this there should be some form of standing legislative authority. Although the requisite authority could be included in an Ombudsman Act, it is more appropriately located in a general financial statute. The power to make such ex gratia payments out of a Ministry of Finance Contingency Fund is now included in the annual Supply Act passed in British Columbia, as a result of an Ombudsman recommendation in 1987. This is of current major significance in British Columbia due to the government's acceptance of a September, 1989 Ombudsman recommendation that compensation exceeding $25 million be paid to investors in failed financial institutions as a result of the Ombudsman's findings of causative administrative negligence by government regulators, even though legal liability is uncertain and is expressly rejected by the government.

Children's Issues

A significant percentage of the complaints directed to our office are related to the treatment of children in the care of or receiving services from government. The total number of such files closed in 1989 or carried over into 1990 was 1,971. Thus, over one-quarter of our jurisdictional files were children-related.

The 1988 Annual Report of the Ombudsman, at pages 23 to 25, noted a pressing need to ensure the protection of the rights of children receiving services from or in the care of government. We described how these rights had been recognized and guaranteed in Canada by the Charter of Rights and Freedoms and by federal and provincial legislation. We noted that a Working Group of the United Nations Commission on Human Rights was in the process of drafting a Convention on the Rights of the Child. That Convention has now been presented to the General Assembly and ratified by all member nations.

Our 1988 Annual Report also stressed the urgency of co-ordinating the provision of services to children by the British Columbia government. We noted that, of all Canadian provinces, B.C. involves the greatest number of ministries in the provision of such services. We drew attention to the fact that the Inter-Ministry Children's Committees (IMCCs), created in 1979 to provide co-ordination of interministry responsibilities, had effectively ceased to function in some areas of the province, and we expressed the hope that initiatives would soon be taken

to address the problems created by the current fragmentation of services.

It is encouraging to note that initiatives have been taken to re-establish the IMCCs. However, the urgent need for further steps to be taken to ensure a comprehensive approach to the provision of services to children and youth was demonstrated this year through an investigation by this office into the death of a youth in a residential care facility. This investigation revealed the grave risks that continue to face young people whose care is dependent on a system where ministerial responsibilities remain divided, misunderstood and lacking co-ordination.

1. United Nations Convention

On November 20, 1989, the United Nations ratified the Convention on the Rights of the Child. Canada played a major role in the drafting of the document and of the last-minute amendments that facilitated its ratification.

Shortly after that ratification took place, our office and the B.C. Council of Human Rights hosted a meeting between federal government officials involved in the drafting and ratification process and officials of B.C. government ministries that will be directly affected by the provisions of the Convention. B.C. was one of the first provinces to support the adoption of the Convention by the Canadian government.

As it is our office's responsibility to ensure fair treatment of children in the care of government, Articles 3 and 12 of the Convention were of special interest to us. Article 3 states:

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff as well as competent supervision.

Article 12 states:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

2. Cross-ministry Responsibilities

The Ombudsman's 1988 Annual Report reported on our systems study of the mechanisms established by government to co-ordinate cross-ministry services to special needs children, youth and their families. Our office reported to the Deputy Ministers' Committee on Social Policy our concern that the Inter-Ministry Children's Committees (IMCCs) established in 1979 to co-ordinate services no longer existed in their original form. In many areas of the province, no IMCCs were in place, and where they did exist their mandates were often confused.

We recommended the creation of a provincially driven, formally mandated mechanism equipped with appropriate and sufficient resources to ensure an integrating approach to the delivery of services. In July 1988 the Deputy Ministers' Committee established a task force to recommend a course of action. In November 1989 our office was informed that the Committee had endorsed the recommendations of the task force and had decided that the IMCCs should be reactivated in all areas of the province.

Membership of the IMCCs was to include representatives from each of the following ministries: Labour and Consumer Services

(Alcohol and Drug Programs); Education (or School Districts); Health; Social Services and Housing; Solicitor General (Corrections Branch); and Attorney General (Crown Counsel). In addition, the Committees would include other individuals, such as representatives from native bands or councils, when appropriate.

The terms of reference of the IMCCs required them to emphasize cases needing co-ordination among Ministries and agencies. The Committees were also to be involved in the development and implementation of protocols among ministries and agencies. In addition to the local IMCCs, there were to be regional committees comprising senior regional representatives responsible for the allocation of resources and the direction of staff. These regional committees were to be charged with resolving policy and protocol issues as well as case issues that could not be resolved by local committees. Policy and direction for the IMCCs was to be provided by the Deputy Ministers' Committee on Social Policy.

A "small working group" was also established by the Deputy Ministers' Committee to review protocols among ministries, review outstanding interministry issues, monitor the delivery of services to children, make recommendations about regional boundaries, and assess the need for and make recommendations respecting an interministry case management handbook.

While these initiatives to re-establish co-ordinating mechanisms at the local and regional levels were welcomed by this office, concerns remain about the increasing number of complaints we receive concerning special needs children and youth. The complexity of the current cross-ministry service delivery system for this population necessitates strong provincial leadership in policy and program planning. The heavy workload and pressing agendas of the Deputy Ministers' Committee on Social Policy suggests the need for government to consider alternative methods of providing administrative leadership in this highly specialized sector of government services. Integrated approaches are essential if special needs children and youth and their families are to be effectively and efficiently served.

Concerns about cross-ministry case management practices frequently arise during our investigations of complaints concerning special needs children, youths and families. In some instances, disagreements occur about which Ministry should be responsible for provision of a service. Our involvement is often sought by complainants when delays in planning result from these disagreements and confusion about responsibilities.

During one such investigation involving a 15-year-old youth in need of special care, management and treatment, we learned of problems alleged to exist at a residential youth facility. The youth had been placed in this facility and had not done well there. He had then been removed by Ministry of Social Services and Housing officials to a receiving home and was later placed in a motel room with 24-hour child care support. The motel owners subsequently provided foster care for the youth.

On February 14, 1989, a fire at the same residential youth facility resulted in the death of another 15-year-old ward of the Ministry. Two 14-year-old youths were later convicted as a result of the incident. One was sentenced under the Young Offenders Act to three years in detention for second-degree murder. The other youth was transferred to adult court and found guilty of manslaughter. Both youths were fetal-alcohol-syndrome children whose developmental functioning was significantly less than that normally expected for youths of their chronological age. Preliminary inquiries by this office indicated that serious concerns had been expressed over a number of years by various agencies and individuals. The facility was originally set up with funding from the Corrections Branch of the Ministry of the Attorney General (later transferred to the Ministry of Solicitor General). The facility was licensed, after significant delays, under the Community Care Facility Act, a statute administered by the Ministry of Health. Ministry of Health mental health officials had also been involved with the facility.

At the time these matters came to our attention, issues related to the fire and death of the youth were being reviewed by the courts, the Coroner's Office and the Regional Fire Commissioner's office, as well as being the subject of internal ministry investigations. However, the cross-ministry nature of the issues, along with our ongoing concerns about apparent break-

downs in cross-ministry co-ordination, suggested the need for a full-scale investigation by our office. The intent of our investigation was to identify problems existing in the administration of programs and services to special needs children, youth and their families and to suggest methods for improving the effectiveness, accountability and fairness of that administration.

A report of our preliminary findings and recommendations for systemic change will be presented to government in the spring of 1990. Senior officials from each ministry will have the opportunity to respond to our findings and recommendations before we release a public report on the investigation later in the year.

Some case summaries in Part II of this report, at pages 123 to 126, provide further illustration of social services cross-ministry issues that came to our attention in 1989.

Appeal Mechanisms

In the 1988 Annual Report, we described an initiative taken by our office to help the Ministry of Advanced Education and Job Training develop a fair appeal procedure for persons seeking assistance under the Vocational Rehabilitation of Disabled Persons (VRDP) programs. This step was being taken by the Ministry in accordance with the terms of a cost-sharing agreement with the federal government.

During the past year the ministry has established an internal review and external appeal procedure that include the following elements essential to ensure a fair process:

1. The requirement for high-quality decision-making by front-line staff with respect to the eligibility of applicants.
2. A stronger program administration through internal review.
3. Independent tribunal hearings that comply with the principles of administrative fairness and are accessible to the public that the agreement serves. The appeal procedure deals solely with the issue of eligibility for programs covered by the agreement and administered by the following ministries: Health (mental health division); Labour and Consumer Services (Alcohol and Drug Program); and Advanced Education and Job Training (Vocational Rehabilitation Services and Colleges).

We also consulted with the Provincial Apprenticeship Board, under the same ministry, with respect to fair adjudication procedures relating to appeals about the trade certification or qualification process administered by the Apprenticeship and Trade Certification Branch. As in our examination of the VRDP procedures, we looked at the first level of decision-making, reviews by the Director and subsequent appeals to the Board.

The Board is currently reviewing our suggestions for the creation of fair appeal procedures.

Public Report Updates

Eleven public reports were released by the Office of the Ombudsman in 1988 and 1989. The following section provides an update with respect to the implementation of recommendations made in seven of those reports.

No. 14 (October 1988):

An Investigation into Complaints of Improper Interference in the Operation of the British Columbia Board of Parole, Particularly with Respect to Decisions Relating to Juliet Belmas

Public Report No. 14 described the findings of our investigation of allegations of political interference with the operation of the B.C. Board of Parole. The principal recommendation made by this office was that the province legislate its own Parole Act. The incentive for our recommendation was the belief that such a statute could strengthen the autonomy of the Board of Parole and ensure that appointments to the Board were reflective of widespread community concerns rather than resulting from a narrow political interest. Other recommendations related to appointments, tenure and other governmental involvement of the Board members.

A new Parole Act containing several of the features proposed by this office was enacted in 1989. The Ministry of the Solicitor General is currently drafting regulations pursuant to the statute, and when these are completed, we understand, the Parole Act will be proclaimed.

No. 15 (December 1988):

Aquaculture and the Administration of Coastal Resources in British Columbia

Although Public Report No. 15 was initiated by concerns relating to the dynamic growth of net-pen aquaculture in B.C., this report of our investigation of issues related to "fish farming" served primarily as the vehicle for a case study in government administration of natural resources in a coastal context. The summary by our office that accompanied the release of the report noted that "the principles of administrative fairness, integrated resource management and consensual dispute resolution recommended for aquaculture in this report can also be applied generally to all provincial land and resource use regulation."

Our office recognizes that the implementation of the major recommendations put forward in the report present significant challenges. The creation of a framework for integrated management of resources and activities in the coastal zone, for example, will require considerable political initiative and interministerial administrative teamwork. An essential goal of the recommendation is the provision of a planning framework that is both powerful (in the sense of drawing fully upon existing ministerial expertise and experience) and accessible to those people whose interests are directly affected by resource allocation and development decisions.

Many encouraging initiatives are taking place as the divers ministries involved with resource allocation or administration begin to address these issues, spurred on by a heightened public awareness of the importance of sustainable development and environmental conservation. These initiatives include:

1. Completion of additional coastal resource identification studies for the Sunshine Coast and Johnstone Strait/Desolation Sound areas and the western Johnstone Strait, Queen Charlotte Strait and Vancouver Island west coast regions by the Ministry of Agriculture and Fisheries. These studies provide important and detailed biophysical data that could ultimately be integrated into a computerized data base such as the Geographic Information System (GIS) being developed by the provincial government.
2. Introduction by the Ministry of Agriculture and Fisheries, in co-operation with the federal government, of a consolidated aquaculture operations licence in an attempt to reduce jurisdictional divisions in the licensing and regulatory processes.
3. An ongoing review by the Ministry of Crown Lands of section 59 of the Land Act for the purpose of refining the appeal process to provide for independent review regarding Crown land applications.
4. An effort by the Ministry of Forests, through its Integrated Resources Branch, to reinforce among its district and regional managers and

other personnel a full understanding of the need for and benefits of integrated resource management. However, it is worth noting that from the perspective of the Office of the Ombudsman, integrated resource management as contemplated by the Ministry of Forests is primarily a function of the competent performance of obligations imposed upon the Ministry by the provisions of the Forest Act and section 4(c) of the Ministry of Forests Act, which contemplate the management and reconciliation of diverse resource values (timber, wildlife, recreation, range, and wilderness) as a basic component of forest management.

While this office supports the intent of the legislation, it remains our view that integrated resource management cannot be meaningfully implemented unless the question of the distribution of administrative authority among ministries is addressed. Each ministry has a mandate established by its enabling legislation, and it is difficult for one ministry, which cannot ignore its primary interest, to attempt to incorporate and reconcile interests the protection of which has been assigned by statute to other ministries that may lack the resources to properly fulfil their mandate.

No. 16 (January 1989):
Police Complaint Process: The Fullerton Complaint

Public Report No. 16 related to the complaint of a couple who alleged that municipal police officers had used excessive force against them. The couple had lost their right to a public hearing under the Police Act because the Chief Constable had found their complaints to be vexatious and not made in good faith. Our fortunate tradition is that we are served nobly by our police forces. However, where allegations of impropriety occur it is not sufficient that the final decision on the matter rest with the police themselves, for their own protection as well as the public's. No matter how thorough and determined an internal investigation and review might be, it is unlikely that the public as a whole will be left with absolute confidence in the impartiality of the process. This is unfair to police officers who may deserve full exoneration, and it does not adequately serve the public interest. We recommended that the cabinet consider ordering a public inquiry under the Inquiry Act.

Such an inquiry was subsequently ordered and was concluded in 1989 by the B.C. Police Commission. The hearing dealt with administrative aspects not covered in the civil action launched by the couple against the municipal police force. The Commission's findings are expected to be released shortly. Having been unsuccessful in their civil suit, the couple have appealed the court decision.

On July 1, 1989, amendments to the Police Act were proclaimed, bringing into force a new section 72, which reads: "The Ombudsman Act does not apply to this Act or the regulations." The effect of this section is to remove the authority of the Ombudsman to investigate complaints about the actions of municipal police forces.

People who make such complaints to our office are now referred to the B.C. Police Commission. We are hopeful that a Police Complaints Commissioner — a new position created by the amendments to the Police Act — will soon be appointed to deal with these difficult and vitally important issues.

No. 17 (January 1989):
Willingdon Youth Detention Centre

An alarming number of incidents of self-harm and attempted suicide occurred at Willingdon Youth Detention Centre in Burnaby early in January 1989. We investigated those incidents after they were brought to our attention, and reported our findings in Public Report No. 17.

The report found no single common cause for the incidents but identified issues that caused us concern. The report included recommendations for changes to improve supervision of the residents, provide more psychological support and monitoring, and enhance programming. The Corrections Branch accepted these recommendations.

Physical alterations to the institution have been taking place since the report was issued. Additional psychological supports are in place, and programming has received special attention. Our recommendations for physical alterations were tempered by the fact that the Branch planned eventually to replace the aging and

sometimes overcrowded building. We therefore limited our recommendations for alterations to those we believed were necessary to provide a safe environment for a high-risk population.

The Ombudsman's 1985 Annual Report had noted numerous inadequacies in the buildings. The architectural shortcomings of the Centre appeared to be important factors leading to the incidents that took place in January 1989. We were therefore pleased to be advised by the Branch in July 1989 that $6.5 million had been approved for planning and site acquisition for a new facility to replace Willingdon and the nearby Holly Open Custody Centre. The Branch anticipated that the new Centre would be completed in 1992.

No. 18 (July 1989): *The On-Site Septic System Permit Process*

Our investigation of complaints about the septic system permit process involved three Ministries - Health, Municipal Affairs, Recreation and Culture, and Environment - and the resulting public report made 17 recommendations. In February 1990 the Ministry of Health provided our office with the following report on the implementation of those recommendations:

1. Development of the Policy Manual (Recommendations 1-5)

   All health units have been requested to provide specific information regarding sewage disposal "policy".

   Information Services has agreed to initiate a contract to develop a written, comprehensive set of on-site sewage policies. Mr. S—— will work closely with the contractor.

   The first phase of the contract has been awarded to review all the material provided by the field staff and to organize it into a "format". This phase will be completed by March 31, 1990, and the actual writing will then commence.

2. Review of Health Unit caseloads (Recommendation 6)

   The placement of nine additional Public Health Inspectors in the Lower Mainland is intended to assist in the increased workload generated as a result of rapid population growth.

   The 1990/91 budget submission is intended to address health unit workloads throughout the province. Justification and assessment of workloads is contained in the budget submission.

3. Medical Health Officers' responsibilities (Recommendation 7)

   A review of the responsibility and supervisory capabilities will be initiated to determine if Medical Health Officers are interested and able to provide adequate support to Public Health Inspectors.

   Section 36(1) of the Health Act specifies that the Medical Health Officer is the Chief Health and Sanitary Official, and, as such, the final appeal under the Sewage Regulation. If the Medical Health Officers wish to continue with this authority, they should be provided the opportunity to update their expertise in on-site sewage disposal.

   Medical Health Officers will be asked to comment on this matter and to determine a consensus of opinion on their interest in sewage disposal. A recommendation on how to proceed will be made after the input from the Medical Health Officers is received.

4. In-service training programs and regional training courses for Public Health Inspectors (Recommendations 8 and 9)

   Public Health Inspectors have enrolled in the course Hydrogeology 601, which began on February 19, 1990.

   Those inspectors who have successfully completed the course will attend an educational seminar/workshop at a central location. It is expected that instructors will be drawn from the public and private sector as well as from the university community.

   Those who have completed the above will then take a second course, Soil Geography 317, which is available through Simon Fraser University and the Open Learning Institute.

   It is expected that all future regional Public Health Inspectors' training sessions will have an on-site sewage disposal component included in their sessions - e.g., the Northern In-Service Training session, held in March 1990, contracted with an engineering consultant to hold a one-day work shop on lagoon

design, installation and operation.

Regional training will intensify upon completion of the policy manual, particularly relative to regional policies, and upon completion of training. It is expected that those who have completed the training will be leaders in on-site sewage in the region, and they will actively participate in staff training and development.

The training of "specialists" will be completed by the end of 1990. Regional training will also be started by this date.

5. Expand the role of the Public Health Protection Branch (Recommendation 10)

   It is anticipated that the expertise and contacts made by the Ombudsman officer will be used to develop a research data base and to encourage research activity at the college, university, institute and field levels. A letter requesting her services was sent to an Assistant Deputy Minister of the Ministry of Environment. A response was received on February 6, 1990, acknowledging our request and granting her time to assist with this project.

6. Amend the Health Act to allow for an appeal (Recommendation 11)

   A letter to the Assistant Deputy Minister, Management Operations, requesting that he pursue this matter was sent on November 9, 1989. We are presently awaiting a response.

7. That contractors and installers be certified and set aside a performance bond (Recommendations 12 and 13)

   This will require an amendment to the Sewage Disposal Regulations. The benefits versus the political reaction from contractors will be evaluated during the development of the policy manual, and recommendations will be made to the Ministry executive in July 1990.

8. Cabinet submission for special funding (Recommendation #14)

   In recent years, funding available has risen from $7 million to $35 million, and cost-sharing has gone from 25 percent to 50 percent. Mr. S—— represents the Ministry of Health on the committee that allocates this funding, and health-related problems are receiving number one priority for grant approvals.

9. Recommendations 15, 16, and 17 are directed to the Ministry of Municipal Affairs, Recreation and Culture.

   To ensure that our interests are taken into consideration, a letter was sent on October 24, 1989, from the Deputy Minister of Health to the Deputy Minister of Municipal Affairs, Recreation and Culture. This letter announced Mr. S——'s availability to assist his staff with the review of the Subdivision Regulations. Mr. S—— has made verbal contact with the Director of Engineering Services, who has been assigned responsibility to undertake this task.

No. 19 (September 1989): *The Regulation of AIC Ltd. and FIC Ltd. by the B.C. Superintendent of Brokers (The Principal Group Investigation)*

In 1989 the Ombudsman's office concluded a major investigation into the regulation by the Superintendent of Brokers, in the Ministry of Finance and Corporate Relations, of two investment contract companies in the Principal Group - Associated Investors of Canada Ltd. and First Investors Corporation Ltd.

In the course of this investigation, lasting approximately 20 months, Ombudsman staff reviewed about 20,000 pages of documents, including all relevant material from the Office of the Superintendent of Brokers, Alberta's Code Inquiry and the Robinson Inquiry, and documents from the files of Alberta regulators. Thirty-four individuals were examined under oath pursuant to a provision of the Ombudsman Act, and their testimony was transcribed by an official court reporter for the purpose of providing an accurate factual basis upon which to assess the adequacy of the response of B.C. regulators.

In Public Report No. 19, the Ombudsman concluded that the administrative negligence of regulatory staff in the Office of the Superintendent of Brokers was a major contributing cause of the losses of B.C.'s 17,000 investment contract holders. Through the liquidation of the companies' remaining assets and through a compensation scheme announced by the Alberta government after completion of the Code Inquiry, investors were to receive 75 cents on the dollar in relation to capital and interest to the date of collapse. The Ombudsman recommended

that the B.C. government meet its responsibility to B.C. investors by supplementing that recovery to achieve a rate of 90 cents per dollar. The B.C. government agreed to this recommendation to the extent that it indicated a commitment to make available an amount of approximately $25 million, being the amount required to bring the recovery of B.C. investors to approximately 90 cents per dollar.

Negotiations among interested parties, including the Alberta and British Columbia governments and legal representatives for the investors, have resulted in an arrangement whereby a certain portion of the $25 million is to be shared with investors from Alberta. To date, investors have received approximately half of the money they lost. The final level of recovery for all B.C. and Alberta investors who agree to accept the offers made by their respective governments is projected to be in the range of 80 cents per dollar.

The Ombudsman's investigation into the sale of promissory notes by the parent company, Principal Group Limited, which commenced in October 1989, is presently under way.

No. 20 (September 1989): *An Investigation into Allegations of Administrative Favouritism by the Ministry of Forests to Doman Industries Ltd.*

This investigation was launched following receipt of a complaint from an MLA who came into possession of a number of Forest Ministry letters and memos, some of them written in rather inflammatory language. The collective impact of this documentation was to raise suspicions that Doman Industries Ltd. was the recipient of a number of timber allocation benefits as a result of political friendships. The various issues analyzed by our office included access logging, trespass and trespass billings, silviculture obligations and performance, allowable annual cut (AAC) allocations and penalties for non-compliance, and performance pursuant to contractual obligations to construct wood-processing facilities.

Our office found that, although the Ministry would have been legally entitled to cancel Doman's timber tenure entirely at certain points in time for non-compliance with the requirements of both the Forest Act and its contractual agreements with the Ministry, the executive of the Forest Service made a number of reasonable decisions, which they were legally entitled to make, pursuant to the discretionary powers granted to them by both the Forest Act and their tenure agreement with Doman. We found no evidence that there had been inappropriate political interference in any significant decision made by the Forest Service with respect to Doman Industries. On the contrary, the senior executive of the Forest Service had the unenviable job of attempting to reconcile, on one hand, poor performance by Doman Industries in certain critical areas (AAC compliance, harvesting methods, silvicultural performance, mill construction obligations) and similar concerns, vigorously expressed by the Mid-Coast District Office, with, on the other hand, the economic and employment track record of Doman Industries, which was almost unique in the province as a consistent employer, keeping its workers on the payroll without layoffs through the recession of the early 1980s.

What we found was perhaps not unusual for a large, decentralized organization such as the Forest Service; district personnel were charged with ensuring that companies observed acceptable forestry standards in their operations - this meant enforcing the terms of the Forest Act and its regulations — and the requirements of the timber tenure agreement. We perceived that the Mid-Coast District Office — and we have no reason to believe that this is not the case throughout the province at all District Offices — discharged its duties professionally and vigorously.

On the other hand, senior Forest Service officials, virtually all of whom came up through the ranks in the service, were required by the nature of their job to take enforcement recommendations received from various District Offices and make judgements based on wider criteria than those which would be applied in the field by front-line personnel. Such criteria would include economic and employment impacts, as contemplated by both the Forest Act and the Ministry of Forests Act. This is logical: decisions of a regulatory nature having a significant or perhaps catastrophic impact on the operations of a tenure holder should benefit from the applied experience of not just front-line

personnel but also senior management, who are entrusted with the authority to make strategic decisions affecting the welfare of timber users and of rural communities.

What we found in this instance was a series of administrative decisions made by senior executives to effectively relieve Doman Industries Ltd. of the consequences of certain failures to meet its contractual or statutory commitments. The effect on District personnel, seeing Doman Industries being "let off" without penalty on a number of occasions, was troubling to say the least. Senior District personnel described one of their main concerns as the effect on staff morale, when it could be seen that the regulatory "big sticks" were being taken away.

The major problem here was one of communication. Decisions were made at the senior level without being adequately communicated to the District staff with respect to the perceived factual basis, the reasons for the application of discretionary power, and the scope of application to local administration. The effect on District staff was demoralizing and served only to feed suspicion that corporate interests were pulling political strings in Victoria. Indeed, it seemed that for almost all individuals in the Forest Service who did not share in the decision-making process by which discretion was exercised in Doman's favour, there existed a suspicion of varying degree that political influence was being brought to bear behind the scenes to benefit certain industrial constituents. Ironically, no evidence was brought forth by any individual to give substance to this perception; however, it was an understandable conclusion to be drawn from a series of decisions made in the absence of adequate explanation.

It is important to state also that this office reviewed the conflict over AAC between the Ministries of Forests and Environment and concluded that there, too, was demonstrated inadequate communication between Ministries. For that reason we recommended the restoration of regional resource management committees, founded by regulation, so that information will be exchanged on a regular basis.

We concluded the report with an observation on the usefulness and necessity of full and open communications among all levels of Ministry management so that the reasons for such decisions may be fully understood by all personnel involved in monitoring and enforcement of forest company obligations, both statutory and contractual.

Part II
Case Summaries

The case summaries included in this section provide a representative sample of the investigations conducted by the Office of the Ombudsman during 1989. The summaries illustrate not only the wide variety of complaints made to us about authorities within and outside our jurisdiction but also the variety of approaches used by our office to provide assistance to complainants. Such assistance ranges from simple referrals to other agencies, in the case of non-jurisdictional complaints, to investigations taking several months or even years to complete. An example of the latter was the Principal Group investigation, which was concluded with the recommendation for compensation to investors that was made in Public Report No. 19, released in September 1989 and discussed in the introductory section of this report.

The majority of investigations we conduct are closed after a phone call or two to officials in government. A few authorities, such as ICBC, have facilitated our investigative process by setting up departments for the sole purpose of handling complaints brought to our attention.

Other investigations require us to set up meetings with government officials and, in some cases, to travel throughout the province to conduct interviews and to review circumstances that we may be unable to assess simply by obtaining written or oral descriptions. In addition, we make regular visits to correctional and mental health institutions and to institutions for the developmentally disabled to hear the complaints of individuals who may be reluctant or unable to discuss their concerns by telephone.

As a general rule, authorities are quick to act on suggestions or recommendations made by our office for the resolution of complaints. In some situations we act as mediators, bringing complainants and government officials together for a settlement of a problem that may be more appropriately resolved by discussion and compromise rather than by a finding of fault — or of exemplary conduct — by our office. This is especially true in situations where problems are created by misunderstandings or breakdowns in communication resulting from differing perceptions of rights and responsibilities. The public interest — and the interest of the government that serves the public — is best met by an Ombudsman office that seeks to provide resolutions that are fair and satisfactory to both complainant and government, whether or not

any fault is found. This is reflected in the use of the term "resolved" rather than "substantiated" in the statistics that precede the case summaries for each authority and that appear in the tables at the end of this report.

The terms used to describe the conclusions to our investigations are precise in their definition. They are as follows:

RESOLVED: The problem that led to the complaint has been either completely or in large part resolved to the satisfaction of the complainant and the authority as a result either of actions taken by the authority or of any other change in circumstances.

NOT RESOLVED: Our office has made a suggestion or recommendation for a remedy to the authority against which the complaint has been made, or to the cabinet or legislature, and we have been advised that the remedy will not or cannot be implemented.

ABANDONED: In spite of repeated efforts by our office, the complainant cannot be reached or has not responded to our attempts to establish contact.

WITHDRAWN: The complainant has instructed our office to terminate our investigation.

NON-JURISDICTIONAL: The agency against which the complaint was made is not an agency of the provincial government or is an authority mentioned in a section of the Schedule to the Ombudsman Act that has not yet been proclaimed.

NOT SUBSTANTIATED: Our office has found the complainant's allegations to be either unfounded or incapable of being proven.

DECLINED: Although the matter complained of is within our jurisdiction, our office has declined to investigate the complaint for one of the reasons set out in section 13 of the Ombudsman Act. For example, we have concluded that appeal procedures exist that have not been explored by the complainant or that the merits of the complaint can be assessed without conducting an investigation. The entire text of the Ombudsman Act is printed in the final pages of this report.

DISCONTINUED: An investigation was begun and then discontinued because of one of the reasons set out in section 13 of the Ombudsman Act.

INQUIRY: An individual contacted our office not to complain of wrongdoing by a provincial authority but rather to obtain an explanation of a policy, procedure or practice used by an authority or of legislation or regulations.

As this is a report of our operations in 1989, the titles of authorities mentioned in the following summaries are those that existed before the cabinet shuffle and renaming of some ministries in the latter part of 1989.

Ministry of Advanced Education and Job Training

Resolved	26
Not resolved	-
Abandoned, withdrawn, nonjurisdictional	3
Not substantiated	6
Declined, discontinued	17
Inquiries	8
Total number of cases closed	60
Number of cases open December 31, 1989	42

Most of our complaints about the Ministry of Advanced Education and Job Training involved student loans, and typically came from students whose loan applications had been turned down or from ex-students facing repayment difficulties. With the assistance of the Ministry staff we were generally able to assist complainants or provide the information needed for a reasonable explanation of the Ministry's position.

A warning for the overconfident

A welder was required to write a test, administered by the Ministry, to renew his ticket. The passing mark was a stiff 70 percent, but since the welder had worked in the trade for most of his life, he was sure he could get through it without studying.

The predictable happened. He very nearly passed, with 65 percent. The failing grade meant his ticket was not renewed, which meant his job was in immediate jeopardy, as he needed a welder's ticket to continue working on the site.

In a panic, the welder asked the test administrator if he could write the exam again. Told that he would have to wait for three months, he sought our help, saying he would lose his job and be unable to pay pressing bills and the mortgage. We suggested he use the available remedy of outlining his concerns in a letter to the Director of Apprenticeship.

Sympathetic to the welder's dilemma, the director told him he would waive the normal 90-day wait on condition that if the welder failed a second time there would be no additional waiver and he would have to provide evidence of completion of upgrading before being allowed to write the exam a third time. (CS89-1)

Part-time student, partial funding

A handicapped person told us that Vocational Rehabilitation Services (VRS) had agreed to sponsor him fully for a college training course and had later reneged by not providing all of the training allowance moneys.

Our investigation revealed that the VRS consultant was unaware that the complainant was unhappy with the funding formula that had been worked out for his training. It had been arranged that while the complainant was attending an upgrading course on a part-time basis, VRS would pay for his tuition fees, books and supplies and provide a transportation allowance. He would not be eligible for living expenses, however, as he was driving cab while not in school.

A meeting was arranged between the complainant and the consultant to attempt to come to a mutually agreeable settlement. It was agreed that when the complainant had to attend training on a full-time basis, the consultant would explore the possibility of providing additional training allowances from alternative sources to supplement his lost wages. The complainant was satisfied with the outcome. (CS89-2)

An offer she couldn't refuse

An employer thought it unethical that a person who had been enrolled in a government-subsidized training program had quit before finishing the program. She told us that, in her opinion, the granting of the subsidy by the Job Training Division of the Ministry should have been conditional on completion of the program.

We discovered that the employee had left the program on being offered a permanent job with another firm. Although completion of the program was not required for payment of the subsidy, it was paid in instalments as the training progressed rather than in a lump sum. In addition, we reminded the employer, the condition she said should be imposed on employ-

ees does not apply to employers, as companies are not required to continue training an employee who proves unsuitable or to provide a permanent job on completion of the program. In the result, we found the complaint to be not substantiated. (CS89-3)

Father's business in the red, son seeks loan

B.C. student loans are granted to eligible students (taking approved courses, at least 60 percent full course load, for eligible costs, etc.) based on parental ability to contribute. Exceptions exist for mature students, wards of the Superintendent of Family and Child Services and students whose relationships with their parents have broken down, but in most cases there is an expectation that parents are responsible for the cost of their children's education.

We received a complaint about this expectation from a young man who thought that "loans" as opposed to "grants" should have nothing to do with family income. He was also concerned about his particular situation. His father had started a business, hoping to ease out of his job into self-employment once the business was established. In the meantime, however, the business operated at a loss. Revenue Canada allows such losses to be deducted from primary income for tax purposes, but the Student Services Division will not consider it for its means assessment. The student thought this to be inequitable and pointed out that his parents' debts meant they could not pay the $4,000 assessed.

We know that many students are faced with the difficult choices of working, scraping by or taking time out because their parents either cannot or will not contribute enough to support them. It is a well-established social policy to expect parents to help educate their children. Although B.C.'s contribution is a loan, it has many grant components. The province guarantees the loan, provides interest-free status and forgives the loan in some situations. Because the program is a cost to the taxpayers, guidelines exist to ensure that allocated funds are distributed according to need. In this case in particular, the policy is designed also to ensure that government-guaranteed funding is not used to subsidize or encourage secondary, optional businesses.

Our mandate in reviewing this issue is not to question the basic "social" framework of parental contribution. It would be appropriate for us to comment on a policy which resulted in injustice or discriminatory effects, but such effects are not evident with respect to the student loan policy, which is designed to provide a net to catch students whose family situations have broken down. Those who do not fall in that category may be faced with difficult choices respecting their education, but as the policy is applied in an even-handed manner, there are no grounds to conclude that it is improperly discriminatory.

Having reviewed the circumstances of the complaint in the light of this policy, we found the complaint to be not substantiated.(CS89-4)

Loans cut off in second year

A man whose application for a student loan had been turned down was in a panic when he contacted us. After working in Alberta for a few years, he returned to his home town in B.C. to go to college for two years, partly because his brother had taken the course earlier and could help him. The Student Services Division provided funding for the first year but rejected his second application because he was not a B.C. resident.

The general rule for loans is that the province in which you live loans money for approved courses. The province may help you to attend school out-of-province if the course is not available locally or if there are family reasons such as the location of a spouse's employment, but one cannot move to a different province to go to school and expect to be funded by that province.

This man should not have received the first loan. He should have been told that he was eligible in Alberta, and then he could have decided whether or not to change his plans to move to B.C. Because he was halfway through college in B.C. and might be unable to transfer his credits elsewhere, and because no one had caught the problem in the first year, Student Services agreed to process a second loan so that the man could complete his course. (CS89-5)

Restrictions on international students

We received a complaint that a B.C. resident could not attend a college due to limitations on enrolment. The question was raised whether this was a result of preferential registration for international students.

The Ministry policy governing the attendance of international students at British Columbia colleges has two provisions: (1) international students may not displace domestic students; and (2) international students must pay the full cost of their education.

The college in question ensures that domestic students are not displaced by requiring advance notice of the number of international students registered for each course. Based on that information, additional spaces are added to accommodate any domestic students who may have been displaced. The college uses the revenue derived from international students' tuition fees to add more spaces.

The complainant also asked whether international students receive priority because they pay higher tuition fees. The Ministry of Advanced Education and Job Training requires that the fees of international students cover all direct and indirect costs of their instruction. While this may result in higher fees paid by international students, this does not result in preferential treatment or admission. (CS89-6)

Ministry of Agriculture and Fisheries

Resolved	2
Not resolved	-
Abandoned, withdrawn, nonjurisdictional	3
Not substantiated	8
Declined, discontinued	3
Inquiries	1
Total number of cases closed	17
Number of cases open December 31, 1989	19

Insufficient cows for complaint

A small cattle producer — no, he didn't produce small cattle, and we don't know if he is small himself, he simply didn't have many cattle — complained to our office concerning the threshold limit established by the Crop Insurance Branch of the Ministry of Agriculture and Fisheries for participation in the B.C. Beef Farm Income Insurance Plan. Rules established under the plan limit participation to producers raising 20 or more head of cattle. The complainant had seven.

After reviewing the matter with the Ministry, we found the complaint to be not substantiated. Funding for the Beef Farm Income Insurance Program was dependent on certain contributions from the producers. In addition, administrative costs associated with the processing of claims made an entry level production requirement necessary to ensure the financial viability of the plan. (CS89-7)

Discrimination against gardeners?

A complainant expressed concern that the Crop Protection Branch of the Ministry of Agriculture and Fisheries no longer provided diagnostic and advisory services relating to plants grown by private gardeners. He contended that, as the Branch was still offering services to professional nursery operations and the like, the result was unfair discrimination against non-commercial gardeners.

Our investigation showed the complainant's allegation about suspension of service to be true. While there was undoubtedly discrimination in favour of business interests, we found it to be justified. At the time of the complaint, there was only one plant diagnostician on staff in the Crop Protection Branch, and the Ministry understandably took the position that it did not have the resources to offer services to both businesses — which employ considerable numbers of individuals and also are responsible for significant plant and food production and sales - and to the many private gardeners in the province. Preference was given to that sector where jobs are at stake, and this office, when reviewing the Ministry's allocation of resources, could not criticize the result. (CS89-8)

Orchardist seeks reimbursement

An orchardist questioned the fairness of the administration of the partial interest reimbursement program, carried out under the authority of the Agricultural Credit Act. The interest reimbursement program was, prior to being discontinued, precisely as the name implies: a program to reimburse qualifying individuals for the cost of borrowing to purchase land, buildings, or equipment relating to an agricultural purpose as set out in section 2 of the Act.

For a number of years the complainant had carried on an orchard operation in the interior of B.C. with his wife, who was a 50 percent partner in the operation of the farming business. Later they divorced, and the complainant obtained the necessary financing, as part of their separation agreement, to buy out his wife's interest in the orchard operation. This included the purchase of land, buildings, and equipment. The complainant then applied for — and was denied — assistance by way of interest reimbursement under the provincial program.

After careful review of Ministry of Agriculture and Fisheries policy established pursuant to the provisions of the Act, we agreed with the Ministry's reasons for denying assistance. The purpose of the partial interest reimbursement

program was primarily to assist farmers entering the business and incurring considerable financing costs; a secondary objective was to assist those farmers who, in the normal operations of their business, were forced to borrow to the extent that financing costs could impair the continued viability of the enterprise. This latter aspect is referred to in the Agricultural Credit Act as a "consolidation or other rearrangement of liabilities".

We agreed with the Ministry that the complainant's circumstance should be properly viewed as a business transaction which had the effect of doubling the complainant's personal asset base. It was not an entry level transaction for the commencement of a farming business, nor was it a consolidation of liabilities, in the sense that the liabilities were incurred as a normal aspect of the farming operation. Hence we were unable to substantiate the complainant's concerns. (CS89-9)

Ministry of Attorney General

Resolved	52
Not resolved	1
Abandoned, withdrawn, nonjurisdictional	32
Not substantiated	40
Declined, discontinued	15
Inquiries	27
Total number of cases closed	167
Number of cases open December 31, 1989	72

Office of the Public Trustee

The Office of the Public Trustee has three main functions. The first is to administer the financial affairs of people who can no longer do so for themselves. The second is to administer the estates of people who have died intestate — without a will. Lastly, the Public Trustee provides various administrative and legal services in its guardianship capacity for people under the age of 19.

The Trust Administration Department handles the financial affairs of clients who have become legally incapable. The staff administer monthly income and expenditures and manage the client's assets. Asset management often involves difficult decisions. For example, if there is any possibility that the client will recover, then it would not make sense to sell the client's house. If the prognosis is not so good, then the house should be sold so that its proceeds can be used for the patient's care. As the client's condition may fluctuate, it is not always easy to know at what point such a decision should be made. These problems are compounded when the client's relatives and friends do not agree with each other about the steps the Public Trustee must take. Thus the job of a Trust Officer involves not only a sound knowledge of financial administration but also patience, tact and empathy in working with the client and his or her relatives.

The Trust Administration Department is now undergoing a thorough reorganization. The Attorney General has committed additional funds so that staffing levels and backup technology can be enhanced. It is expected that this reorganization will resolve many of the problems that have led to complaints to the Ombudsman's office over the years. These complaints often involve delays in communicating with clients and relatives, as well as a reactive rather than proactive approach to problems which arise in administering clients' funds.

The underlying causes of many of these complaints are being addressed through the reorganization project. At the moment, the reorganization team is meeting with groups throughout the community who use the facilities of the Public Trustee and is incorporating the information received from these groups in its plan for change.

The Estate Administration Department is also undergoing major revisions which should lead to reductions in the time necessary to distribute and wind up an estate. The Attorney General introduced legislation earlier this year which makes the Public Trustee the Official Administrator for the province. Reporting to her will be a number of Deputy Official Administrators who have been appointed on a regional basis to administer intestate estates. At present, Deputies have been appointed in four regions, and the Public Trustee hopes eventually to appoint Deputies for the rest of the province. By decentralizing this aspect of the Public Trustee's work, people who do not live in Vancouver should find the new system more accessible and responsive to individual needs. The Public Trustee will continue to administer estates where she has been named as executor, as well as those cases where the Public Trustee is committee or guardian of a beneficiary of an intestate estate.

Additional home-maker service provided

We were contacted on behalf of an elderly gentleman who complained that the Public Trustee had not taken steps to ensure that he received a sufficient level of home-maker hours. His friend told us that there was very little food

in the refrigerator, even though the gentleman had an income which should have been adequate to provide for him fully.

When we investigated, we discovered that the home-maker service was unaware of the fact that additional income was available to provide for increased hours of service. The Public Trustee, on the other hand, was unaware that the level of hours was insufficient. The Public Trustee responded to our request for intervention, and the problem was resolved. (CS89-10)

No money to search for heirs

The complainant, a prospective beneficiary of an estate, was told by a staff member in the Office of the Public Trustee that it was her own responsibility to retain a lawyer to identify the deceased's heirs. She could not afford to do so, and contacted us because she felt the search for heirs should be undertaken by the Public Trustee. She also complained of the delay in completing the administration of the estate.

The Public Trustee confirmed that it was not the complainant's responsibility to find the deceased's heirs and that the staff member who had given her this advice was in error. As far as the delay was concerned, the reorganization now underway should prevent such delays from being commonplace in future. (CS89-11)

Disabled by allergic reaction

Many years ago, a client for whom the Public Trustee acts as committee developed pneumonia while she was in hospital. Despite a notation on her file that she was allergic to penicillin, penicillin was administered. Her husband told us that she had suffered a reaction to the drug which left her permanently disabled and in need of care in an institution. Some years after the incident, he reported it to the Public Trustee, and asked that compensation for the injury be obtained, as he was facing bills for the cost of his wife's care which he was unable to meet. He complained to us that the Public Trustee had failed to take steps to obtain compensation.

In fact, the Public Trustee had obtained a legal opinion which recommended that a claim not be pursued for reasons pertaining to the client's medical history. The Public Trustee advised the complainant that such a decision had been made but did not provide him with a copy of the legal opinion or provide any other explanation of the reasons for the decision. When we intervened, the Public Trustee gave the complainant full information about the reasons for the decision and tried to find ways to reduce the cost of the client's institutional care. Unfortunately, this was not possible. (CS89-12)

Called to account over cakes

As life expectancies increase, it is becoming common for a spouse or other close relative to take over the financial affairs of a person whose faculties begin to fail. The relative often begins with minor acts such as obtaining signing authority on a bank account. As time progresses, a power of attorney, a trusteeship over old-age pensions and a committeeship under the Patients Property Act may become necessary. The Public Trustee is responsible for reviewing the accounts of such committees or trustees to ensure that the interests of the person whose money is being managed are properly protected.

People who are called to account by the Public Trustee occasionally call our office to voice objections about the process. They may interpret it as a slur on their stewardship, and in the minds of some callers it adds insult to injury that a fee, payable from the patient's money, is charged for the review. Often our role consists simply of explaining the process to callers and reassuring them that the Public Trustee is there to protect the patient and assist the committee rather than looking for fault in the committee's accounts.

A typical caller was an elderly woman whose husband had been incapacitated for almost 20 years. Having obtained a committeeship by court order, she had for a long time managed the family finances, selling the house to buy a smaller one and investing the balance in a manner that increased the couple's income. After years of scraping by and keeping receipts for every purchase so that she would be prepared to explain her expenditures when called upon to do so, she was beginning to feel some-

what victimized by the Public Trustee's questions about her accounts. It annoyed her, for example, that she had to justify the expenditure of $40 on cakes to satisfy her husband's sweet tooth.

The woman was not aware that the Public Trustee may approve monthly "allowances". Prior to approving such an arrangement, the Public Trustee requires a submission explaining costs of housing, food, clothing, medical supplies and so on, which is then used to authorize a regular monthly limit below which no accounting is required. We suggested that she contact the Public Trustee to express her interest in seeking approval for the arrangement.

The woman also said that her husband wanted to make a new will, and she was worried that the Public Trustee might contest it after he died. Persons who are incapable of managing their money may still be capable of making a new will, but where a testator's capacity may be in doubt, it is always advisable for his family to obtain a written opinion from a doctor to the effect that he is able to understand the issues involved in executing a will or codicil. The woman said that this had been done. On her behalf, we contacted the office of the Public Trustee to explain her concerns, and they agreed to take a position on the will once the woman had submitted to them the relevant medical information regarding her husband's capacity. (CS89-13)

Agencies' oversight leads to loss of orphan's benefit

When a child is orphaned and the parents have not left wills appointing a guardian, two government agencies become involved: the Superintendent of Family and Child Service becomes the guardian of the person of the child, and the Public Trustee becomes guardian of the estate. The Superintendent, through the Ministry of Social Services and Housing, provides care, assuming that no family or friends come forward; the Public Trustee handles any money or property left to the child, claims benefits available because of the parents' deaths, and so on.

This division of responsibilities, while relatively straightforward, requires coordination and communication between agencies in separate Ministries. For example, the field social worker must keep the Public Trustee informed of any potential assets, and the Ministry of Social Services may find it necessary to bill the Public Trustee to use the child's own money to offset the cost of foster care.

The importance of effective communication was underscored by the complaint brought to us by a young woman who had been orphaned in early adolescence. Apparently, neither agency had realized that she was eligible for Canada Pension Plan (CPP) orphan's benefits. Had the Public Trustee applied for the benefits, the Ministry of Social Services could have claimed the money towards foster care, but instead nothing happened. When the child grew up she became aware of the oversight, and asked CPP to pay the benefits she had earlier missed. CPP refused, explaining that such payments had a maximum retroactivity of one year. In this woman's case, the claim went back to 1972 and ran for seven years, including a period when she was an adult because she remained in full-time schooling.

Once we sorted out the details of her 15-year story, we wrote to both agencies, explaining that the amount that had gone unclaimed was over $3,000, some of which could not have been used to offset foster care costs. The Public Trustee responded immediately and issued the woman a cheque for the full amount which could have been paid by CPP. (CS89-14)

Family Maintenance Enforcement Program

The numerous complaints we receive about the program come from creditors who complain of delay in obtaining their money and from debtors who object to various measures taken by the enforcement staff. We are referring these complaints initially to the Attorney General's Director of Family Maintenance Enforcement Program, whose role includes investigating and resolving complaints about the enforcement part of the program. We invite the complainants to recontact our office if they remain dissatisfied, so that we may review the Director's response.

Registration of maintenance order unfair, says debtor

Section 23 of the Family Maintenance Enforcement Act permits the registration of any order against real property of a debtor regardless of whether maintenance payments are in arrears. A man who was not in arrears complained that the provision was harsh and unreasonable, and contended that program officials had erred in advising a creditor — his ex- wife — to register a maintenance order against his real property.

We did not support the complainant's opinion that the legislation is unfair. We believe it to be carefully considered legislation designed to respond effectively to a major social problem - namely, the hardship that commonly occurs when an individual fails, either deliberately or inadvertently, to make court-ordered maintenance payments. The law is not excessive or unbalanced, in that there is an opportunity to apply to a court to remove the registration if it is unfair in the circumstances.

For the most part, when a creditor registers with the Family Maintenance Enforcement Program, the method of enforcing the order is determined by the program officials. Section 23 of the Family Maintenance Enforcement Act is an exception. As this remedy is available to creditors whether or not they are not enrolled in the program, program officials advise them of their right to register a maintenance order against any real property of the debtor. If the debtor is in arrears, the Director automatically registers the order. If there are no arrears, the creditor is still informed of his or her right to register the order. If the creditor wishes to exercise this right, the program will register the order. (CS89-15)

Criminal Justice Branch

The decision whether or not to prosecute a case is the absolute prerogative of the Crown and, as such, is not a matter over which our office has jurisdiction. We do, however, receive a fair number of complaints about such decisions. Through co-operation with Ministry staff, we are generally able either to refer the complainant to someone within the Ministry for assistance or else to obtain information which helps clarify the decision.

No chance of laying a charge

The Ombudsman's office is not always able to achieve a resolution that is satisfactory to a complainant. We were contacted by a man who alleged that he had been assaulted in May and went to the police in September to lay a charge. He received a letter from Crown counsel in December advising him that if he wished to pursue an assault charge, it was necessary for him to swear a document starting the process — known as an information — before a Justice of the Peace. He immediately went to the court registry to do so, and was informed by the Justice of the Peace that no charge could be pursued as more than six months had passed since the incident. He complained to our office.

Our investigation revealed that the police had submitted all the necessary information to the Crown counsel office within the six-month time period; however, by the time Crown counsel wrote to the complainant, the limitation period for prosecution had passed.

We suggested that it was appropriate for the Criminal Justice Branch to contact the complainant and acknowledge the delay that had occurred and apologize for the failure to give him a timely response. The complainant received a letter that expressed regret for the confusion and inconvenience that the referral to the Justice of the Peace might have caused.

However, the complainant was also told that it was likely that Crown counsel would not have proceeded with the assault charge in any case, as it was believed to be a malicious prosecution and an abuse of process.

The complainant asked what the point was of informing him he could swear an information if Crown counsel was not going to act on it. We agreed that the complaint to us could have been avoided if Crown counsel had informed the man of their intention not to proceed when they first contacted him. (CS89-16)

Court Services

The reduction in the number of complaints received about Court Services in 1989 is probably due, in part, to the creation of the Family Maintenance Enforcement Program and the contracting out through the Executions Project of sheriff executions.

Sheriff Services

Highest bid a dollar short

One of the many duties of Sheriff Services is to conduct sales of items seized under the Court Order Enforcement Act. A complainant had bid in the public sale of a car. Under the rules governing the sale, bidders were required to submit a deposit of 10 percent of the bid. The complainant and another party had submitted similar deposits, but the other party was successful because that bid included the proviso that it would be a dollar over the highest bid. When objections were made to the successful bid, the sheriff conducting the auction said he would obtain legal advice prior to a final decision. Having received this advice, he decided in favour of the other party. The complainant didn't think this was fair.

The primary obligation of sheriffs is to obtain an adequate price — a duty owed to the creditor who obtained the court order for the seizure and sale. Legal decisions have ruled that in conducting sales, a sheriff must exercise the judgement and discretion of a reasonably careful businessperson. The sheriff must consider whether the bids received were adequate and which was the best price.

While this office was not able to substantiate the complaint that the sale procedure was unfair, we agreed with the complainant that the nature of the successful bid was unusual. We suggested to Sheriff Services that, in order to clarify public sales in the future, the deposit and bid procedure clearly outline whether bids of this type are allowable. (CS89-17)

$20 a day included the juror's lunch

A man who was selected and served as a member of a jury for two days was told he would receive a daily jury fee and his expenses would be reimbursed. When he submitted his parking and lunch receipts, he was surprised to be told that his lunch would not be paid for, and called us to complain.

We checked the payment records of Sheriff Services and the Jury Act. Section 22 of the Jury Act provides that a person serving on a jury is to be paid a daily fee of $20, which is intended to cover expenses incurred doing jury duty, including meals. In addition to receiving the daily fee, the complainant had been reimbursed for his parking costs. Consequently we were satisfied that he had been paid accurately and in accordance with the provisions of the Jury Act. (CS89-18)

No wedding bells without Attorney General's approval

We often get calls from people in a hurry to get their complaints resolved. A woman who was to be married in 10 days to an inmate of a federal correctional institute had just been informed that the couple required the Attorney General's permission before the marriage could proceed. She contacted our office to find out why this was so and how to get her request considered quickly.

We advised her of a Commissioner's Directive from Correctional Service Canada that makes the Attorney General's permission necessary if there are outstanding charges or warrants against either the inmate or the proposed spouse. The Attorney General must confirm that the marriage will not interfere with or prejudice the administration of justice. The appropriate procedure was outlined to the anxious bride-to-be for making her request to the provincial Attorney General. She got to the church on time, and they lived happily ever after, to the best of our knowledge. (CS89-19)

Ministry of Crown Lands

Resolved	15
Not resolved	-
Abandoned, withdrawn, nonjurisdictional	8
Not substantiated	23
Declined, discontinued	2
Inquiries	1
Total number of cases closed	49
Number of cases open December 31, 1989	28

A common type of complaint regarding the Ministry of Crown Lands in 1989 related to the policy change regarding Crown land rental and sale prices, which were raised to reflect market value. In each case, the Ministry responded with well-researched explanations, offering relevant documentation for a more complete understanding of its position.

Of manure and men

After the Agricultural Land Commission was set up in the early 1970s, it undertook a program of consolidating small acreages into larger properties that were considered to be more economically viable for agricultural production. These in turn were offered to farmers on a rent-to-purchase basis. As the program progressed, several public roads that had separated the smaller acreages were closed. One of these roads came to a dead end at the back of a 20-acre farm and had provided secondary access to it.

The owner of the farm was not happy about the closure. It was his custom to pile chicken manure at the rear of his farm to fertilize his fields. The problem the road closure caused was that during the rainy season the central part of his farm became flooded to a degree that prevented him from trucking manure from the front of his land, where the farm buildings were, to the back of the farm.

During the years following the closure, the farmer complained to every municipal and provincial authority he could think of, including the Ministry of Crown Lands, to which the ALC had assigned all properties that remained in government hands after its land-purchase program was completed. Everywhere the farmer turned, he got the same answer: there was no public need to reopen the road, and he already had access to his property at another location. He then presented his dilemma to the Ombudsman's office.

We consulted with the various authorities which had a say in the matter, and visited the property to consider the options available to the farmer. It was apparent, first of all, that there would be no benefit to the public — or to the farmer — in reopening the road and extending it through his property to join the nearest public road. Secondly, he had the option of negotiating an easement with the neighbour on whose property the defunct roadway now existed in the form of a private driveway. Thirdly, an undeveloped municipal right-of-way approached the back of his property from a different direction and could be developed by adjacent property owners at their own expense, should they agree on such an arrangement. Finally, there was readily available to the farmer a solution that would require no road at all — namely, he could haul all the manure he needed to the back of his farm when the land was dry, which it was for most of the year, and stockpile it close to his fields.

Our conclusion was that, while the farmer's irritation at losing an access route could well be appreciated, both its closure and the refusal to reopen it were well founded, and he had no shortage of alternative remedies to resolve his problem. (CS89-20)

The down side of owning waterfront

People will pay an arm and a leg to live by the water. We have a passion for gazing at the briny deep and being lulled to sleep by the sound of waves lapping at the shoreline. This is all well and good until the winter gales come along and turn the lapping waves to pounding surf. The sea has precious little respect for property lines. It has a habit of rearranging them at whim and gobbling up the waterfront properties for which we pay so dearly. Seawalls are at best a temporary deterrent.

The natural movement of beach material (littoral drift) along a shoreline, the seasonal seaward and landward drift, and wave energy

deflection caused by any intrusion of material into the path of the waves necessitate careful professional planning to ensure that any work done to discourage erosion achieves the intended result. The owners of 10 adjacent waterfront properties were issued a permit by the Ministry of Crown Lands to repair an old seawall and artificially restore a beach which had been eroded during storms. After the work started, the Ministry began receiving complaints from other residents and from a municipality about the property owners' plans to construct groynes — low walls intended to check the drifting of the beach and thereby stop further encroachment by the sea. On further review of the work application, the Ministry realized that the groynes would be incapable of performing the job for which they were designed. When the first permit expired with all work but the groynes completed, the request for an extension of the permit was denied.

The 10 home-owners, having invested about $60,000 on the project, launched a lawsuit against the Ministry, arguing that without the groynes, the beach material which had been purchased would be carried away by wave action. In addition, they sought our assistance.

Although it was reasonable to ban the groynes once the likelihood of their being ineffective had been identified, the Ministry had erred in not thoroughly assessing the proposed construction in its initial review of the application. Had that occurred and the flaws been discovered, an alternative construction plan could have been prepared that would have enabled construction to proceed without the groynes.

The Ministry raised the point that all the properties in question were in trespass as their old seawalls had been constructed without approval on a public beach. It agreed to issue licenses of occupation, to allow the old walls and repair work to remain, and, due to the costs already borne by the residents, to reduce the standard 10-year annual occupation fee of $50 to $20. In addition, the beach profile would be determined at public expense by a professional survey of all the properties and of the beach itself by Ministry of Environment staff. The value of the profile, which was subsequently conducted, is that in the future, if erosion occurs, the precise extent and area damaged may be readily determined, and if the degree of erosion places the properties again in jeopardy from sea action, professionally designed corrective work may be undertaken.

When erosion of public land such as a beach may have an adverse effect on privately owned upland properties and residences, the sharing of the cost of preventive action becomes a problem. The Ombudsman's position in this instance was that because the residents paid for the work in 1989, any future expense should either be shared by the property owners and government or else, in recognition of the public aspect of the beach, be borne entirely at public expense. (CS89-21)

Caught between rocks and hard place

In the early 1960s the provincial government negotiated with the District of West Vancouver a "head lease", under the terms of which the municipality was empowered to administer the foreshore — the strip of oceanfront below high water mark — on behalf of the government. One of the conditions of the lease was that the District was not to permit anything to be done on the foreshore that created a nuisance or annoyance to the owners or occupiers of adjoining land.

Along one stretch of the foreshore were a number of homes and a public park, the latter being used by picnickers and hikers as a starting point for a walk along the beach. Some time after the lease was signed, one of the homeowners lost a section of his beachfront property through erosion, and dumped a pile of large rocks (rip-rap), some of them on the beach, in an attempt to make up for the loss. The result was a barrier which hikers had to negotiate by creating a rough trail around it on the land above.

A further infringement onto the foreshore came some years later when another owner built a swimming pool, part of which extended over his property line and further interfered with the strollers' route. But the straw that broke the camel's back, as far as the walkers were concerned, was the boat that yet another property-owner placed across the trail for the purpose of blocking access to the beach. The

reason, he said, was to prevent people being injured on the rocky beach — and to stop them trespassing on his property, which they had to do to get around the rocks which had remained there all these years, in violation of the lease.

Fed up with the accumulating disruptions to their enjoyment of the beach, the walkers formed a citizens' committee to find a solution. They approached the district council, which ordered the boat removed. However, there remained the larger problem of the swimming pool and the rip-rap, together with the resentment directed by property owners towards walkers trying to skirt the obstacles by crossing private property. The committee contacted this office to see what suggestions we might have for a resolution.

After contacting the Ministry of Crown Lands, whose responsibility it was to ensure that the conditions of the lease were respected, we became involved as a facilitator of a variety of negotiations among the District, the Ministry, the property owners, the citizens' committee, and the lawyers representing various parties to the confusion. The road to resolution, like the beach, was a rocky one, but in due course a mutually acceptable agreement was reached by which part of the encroaching rip-rap would be removed and the footpath restructured to ensure safe passage around any remaining obstacles. The Ministry satisfied itself that the arrangement complied with the conditions of the head lease, and a community headache with a 22-year-old history became a thing of the past. (CS89-22)

Crown lease rent increases

In our 1988 annual report we reviewed the implementation of Crown lease rent increases resulting from a move by the Ministry of Crown Lands towards a system of lease and sale of waterfront recreational properties based on market value rather than arbitrary Ministry figures. We learned in 1988 that a program to convert to market value, combined with an offer by the Ministry to sell a leased property to the lessee at the latter's option, was being instituted gradually, "lake by lake", as logistics permitted through 1988 and 1989. Thus it came as no surprise to us when complaints continued to flow in during 1989 about identical issues.

We investigated the circumstances of each complaint and found that there was no difference in substance between these and the earlier complaints. We therefore had to close each file by informing complainants that we could not substantiate their concerns, as rent increases were consistent with and authorized by the terms of the lease document. In addition, the new property assessments reflected the escalating value of waterfront lots and could not be said to be unfair. The program as a whole was reasonable. (CS89-23)

Fish farmers condemn logging

An Indian band in the Campbell River area developed an impressive fish farm and hatching facility in a bay situated at the base of a steep, wooded mountain slope. The hatchery, construction of which was in progress, was to be supplied by the clean and pure water that percolated through the forest soil and travelled to the bay by the way of a creek. In addition, a reliable water flow was provided by a small dam constructed a short distance away in the woods. The band had hired a professionally trained aquaculturist to manage the facility, and it was envisioned that this enterprise could form the economic base around which the members of the band, previously dispersed, could once again coalesce into a culturally distinct community.

The band contacted this office with a concern that plans for a logging operation in the woods above the fish farm site, on privately held land, could be devastating to their effort. To market the harvested wood one must obtain a timber mark from the Ministry of Forests, but this would present no great hurdle to the applicant, as it appears that the timber mark is usually granted without consideration of any adverse impact to neighbouring properties that might occur as a result of the logging.

Nonetheless, the owner did need one essential component from the provincial government: a Crown lease of the foreshore and water surface for a specified area adjacent to the fish farm, to provide for a log dump to move the timber to market. The decision whether to issue the Crown lease rested with the Ministry

of Crown Lands, to which the band made fervent presentations, including a professionally prepared and highly detailed environmental impact study.

This office found itself in a somewhat awkward position, as it would have been inappropriate to intervene prior to the actual making of the decision. However, we discussed the complainant's concerns, including the potential impacts as outlined by the study prepared for the band, with representatives of the Ministry and advised them that we would be maintaining a "watching brief" on this matter pending a decision and further investigation.

No further investigation was required. The Ministry of Crown Lands, having heard representations from the band and having reviewed the environmental impact study, ruled against issuance of a Crown foreshore lease on the basis that upland logging activities would be disastrous to an operation in which a considerable amount of money (in the millions of dollars) had been invested, and which offered the prospect for year-round employment. (CS89-24)

Cottagers condemn fish farm

The complainants each leased waterfront properties, classified by the Ministry of Crown Lands as recreational, on an island near Powell River. One family used their property on weekends and holidays, while the other complainants, being a retired couple, were in residence throughout the summer. In a bay between their properties appeared a salmon net-pen aquaculture facility, sanctioned by way of a waterlot lease from the Ministry of Crown Lands.

Both complainants were concerned about the fact that a site they considered should be classified as recreational was being used for a commercial purpose. The many objections they articulated included the following:

1. A tenure for fish farm development is incompatible with recreational tenures in the same physical area;
2. The fish farm had a negative aesthetic impact;
3. The fish farm had a negative effect on water quality and "quiet enjoyment" of the complainants' properties as contemplated by the terms of their leases;
4. The aquaculture tenure could be used as a potential vehicle for land speculation through intercorporate assignment;
5. The fish farm would likely have a negative impact on aquatic flora and fauna and especially on abundant natural shellfish populations directly adjacent to the aquaculture tenure;
6. The site was generally inappropriate for fish farming, and an alternate site should be sought out and provided by the Ministry of Crown Lands;
7. The grant of tenure was at all times in conflict with the desires of local government, if not with the existing zoning for the site.

These complaints, originally filed with this office in mid-1987, were quickly followed by numerous other complaints from coastal residents about the suitability of commercial fish farms being located in residential areas, or in pristine wilderness areas which had not previously seen this type of development.

The complexity of the various issues raised led us to search out a framework for potential recommendations through what is known as a "systems study"; the legal, social, scientific and administrative frameworks for aquaculture development and regulation were all examined within a general context of coastal resource administration, and the result was Public Report No. 15, *Aquaculture and the Administration of Coastal Resources in British Columbia*, released by this office in December 1988. For the most part, the aquaculture files remain at the investigative stage while monitoring by our office of the implementation of recommendations made in Public Report No. 15 continues. The file that is the subject of this case comment was the first major aquaculture investigation to be completed following release of the public report.

The result for the complainants was not what they had hoped for. While we sympathized with their situation, there was no aspect of the grant of tenure which could be demonstrably established as unfair. Our investigation revealed:

1. With respect to resource use conflicts, the interministerial referral system used by the Ministry of Crown Lands was observed in good faith. Referral responses were received from the Council of B.C. Yacht Clubs regarding anchorage concerns; from the provincial Ministry of Environment, Fish and Wildlife Branch, regarding the interests within their mandate; from Environment Canada, which gave conditional approval to the tenure provided there would be no killing of salmon predators and no dredging or filling on the site; from the federal Department of Fisheries and Oceans, which gave conditional approval of the site, requiring maintenance of public access to the foreshore, and, like Environment Canada, a commitment not to fill or dredge; and from the provincial Ministry of Health, which imposed certain onsite sewage system limitations. No local zoning was in place that would preclude use of the waterfront for aquaculture.

   We concluded that the grant of tenure by Crown Lands was within its legal mandate and that honest efforts were made to reduce any real or potential conflict. We also noted that Crown Lands views itself as a partner with the Ministry of Regional and Economic Development in encouraging initiatives which will create employment in the province. To this extent, economic benefits flowing from an aquaculture operation were viewed as a positive element to be pursued. It was also noted that the particular site had seen industrial uses in the past, including both a log dump and barge anchorage for a rock quarrying operation. However, at the time of the grant of tenure, no industrial or commercial operations were being carried out in the immediate vicinity of the recreational properties.
2. With respect to negative aesthetic impact, we found that in law there is no "right to a view". As well, aesthetic impact is an inherently subjective matter. This does not mean, however, that attempts cannot be made to quantify the extent of impact. Such attempts will be referred to later in this case comment.
3. The complainants' concern about water quality and "quiet enjoyment" were legitimate, yet we could find no basis on which to deny assurances given by both federal and provincial authorities that operations of the net-pen facility would be monitored and remedial action taken where necessary. Of course, for the complainants, the assurances were nothing more than talk or accommodating gestures. We could not criticize those assurances without their first being put to the test, and no such opportunity had yet arisen at the site.
4. The complainants' concerns about land speculation and intercorporate assignment we found to be unsubstantiated. The net-pen operator had at one point attempted to restructure his operation in order to raise additional investment capital. This raised concerns in the minds of the complainants that the facility would ultimately be taken over by a larger firm that would not be as considerate or as co-operative in its dealings with neighbours, and that might push stocking density within the pens (i.e., number of fish per unit volume of water) to the limit, with significant environmental impact for the neighbouring recreational properties. We found that, regardless of assignment, the conditions imposed with the original grant of tenure remained in place; on that basis, the complainants' concerns could not be substantiated.
5. With respect to the complainants' concerns about impact on flora and fauna — in particular, neighbouring shellfish populations — the scientific determinations inherent in this concern could not be investigated effectively by us. It has been acknowledged by ministry officials at both the federal and provincial levels that the 125 metre distance separation guideline (between net-pen facilities and shellfish populations) is arbitrary, and will be subject to verification through facility operation.
6. Similarly, the complainants' contention that the fish farm site was generally inappropriate for the purpose and that an alternative site should be provided by Crown Lands could not be substantiated. The Ministry of Agriculture and Fisheries, as part of its contribution to the referral process, carried

out a biophysical suitability analysis on-site and determined that the proposed location was suitable for the conduct of salmon rearing in net-pens. In the absence of any considerations forming a basis for the grant of tenure such that it could be shown that Ministries were operating beyond the bounds of their statutory mandate, we could not agree with the proposal for relocation of the net-pen facility at taxpayers' expense. Putting the owner of the facility to the trouble of managing and co-ordinating a relocation and the public purse to the expense of such relocation could not be justified on the facts as found, and could itself be considered inappropriate and unfair.

7. The complainant was correct in noting a conflict with local zoning, in that the development of facilities on the upland portion of the lease in order to support aquatic fish farm activities would require rezoning. Upon investigation, we found that such a rezoning process was in the works and that the conflict at the municipal level was, as expected, of a political nature. Our office found itself to be without jurisdiction with respect to both the municipal aspect of the concern — this office does not yet have investigative jurisdiction with respect to municipalities, as the schedule to the Ombudsman Act has not yet been fully proclaimed — and matters which are by their nature political.

As mentioned previously, the fact that we were not able to substantiate the complainants' concerns does not mean that we had no concerns with respect to the process that led to the issuance of tenure for the site in question. In our final report to the complainants, a copy of which was provided to the Ministry of Crown Lands, we noted the following concerns, based upon recommendations originally put forth in Public Report No. 15:

1. Effective monitoring or remedial actions by other provincial agencies would likely be enhanced through the development of a clear and co-ordinated statutory scheme for the regulation of aquaculture. An aquaculture inspector, with broad cross-ministerial authority, could review and assess compliance of facilities with respect to a range of statutory criteria. This would not only provide substance to the concept of revocation of tenure for non-compliance but would also provide an effective vehicle for the receipt and evaluation of public complaints;
2. "Integrated resource management" does not necessarily include the notion of siting commercial and recreational users next to one another. Believing that planning is the key to prevention of resource use conflict, we have recommended that coastal management should emphasize community planning and control, in co-operation with provincial authorities. This scheme is most effective when an overriding coastal zone management statute is in place to establish clear and concise priorities for coastal development;
3. As a corollary of the previous recommendation, provincial initiatives should support community planning to avoid situations in which development applications, by their speed and volume, overwhelm the capacity of individuals and communities to respond with proper public debate and zoning provisions. We also noted that it may be appropriate for an area in which Crown land tenures for recreation are given to remain as protected recreation areas, notwithstanding that the area in question may have seen many different uses in the past.
4. The referral system is a good process that needs to be enhanced. We also noted that the communication in this case was very good, but part of the credit for that could be given to the repeated, detailed and persistent objections by the complainants.
5. Site suitability assessment is useful primarily for the fish farmer: what conflicting users want and need is a streamlined process for estimating probable environmental impacts. If a computer program for simulating and predicting environmental impacts could be developed for coastal applications, such a development could go a long way towards bringing parties together through mutually agreeable scientific investigations — with the probable limitation that no reports, numbers or studies of any type will alone change the minds of persons deeply opposed to a development. We also noted, quoting again from Public Report No. 15,

that there have been encouraging studies in Washington state that have managed to quantify and assess aesthetic or visual impacts of fish farm facilities through computer modelling and division of sites into a range of classifications. We noted that while there is no "right to a view", ministries of the Crown should nonetheless be sensitive to visual impact concerns in sensitive environments and should be familiar with and require the use of all economically and technologically feasible mitigating measures, such as site design and colour selection.

6. Suspicions regarding the overall fairness of a project naturally intensify when one's only recourse provided by the governing statute (currently the Land Act) is to appeal to the Ministry that made the decision in the first place. This is the basic framework for an appeal as contemplated by section 59 of the Land Act. We are advised by the Ministry of Crown Lands that work is in process to devise an alternate appeal system to replace section 59 to reflect "the basic tenets of administrative fairness" as set out in Public Report No. 15.
7. Lastly, leadership from the provincial government in the application of consensual dispute resolution techniques may have the beneficial effect of putting opponents of certain developments into the system rather than on the sidelines. When opponents of a project are provided with the opportunity to participate meaningfully in the process of conflict resolution, their attitudes may change. It is worth noting that in this case, notwithstanding the persistence of the complainants, dealings between the complainants and the fish farmer, and between the complainants and provincial ministries, were at all times amicable and marked by a genuine spirit of compromise and creative problem-solving. Nonetheless, private enterprises have a business goal in mind, and provincial ministries have a legitimate mandate to pursue. Courtesy and fair play alone may be inadequate to achieve resolution of a problem where interests are by their very nature in conflict; consensual dispute resolution and the method of problem-solving it entails (described in detail in our 1988 Annual Report) require deliberate, careful and sensitive application as a matter of ministerial policy at the highest levels. (CS89-25)

Citizens seek moratorium on fish farm development

In March and April of 1989 we received a barrage of complaints from island residents in the Campbell River area. The element common to each of their concerns was the continuing flow of applications for Crown water lot leases for the purpose of salmon net-pen aquaculture in their area, and the continuing approval of these applications by the Ministry of Crown Lands.

The complainants appeared to be of one mind: the extraordinary influx of aquatic development, most of which was accompanied either by floating or shore-based support buildings and related facilities, was rapidly eroding, if not destroying, the tranquil character of the area. Many of the complainants felt that the high density of fish farms in areas such as Hoskyn Channel would have a severe negative impact on tourism, itself an important contributor to the local economy.

Each application had been forwarded by the Ministry of Crown Lands to the Comox-Strathcona Regional District, which would forward it to the appropriate area director (the regional district is divided into areas, each with its own director who sits on the governing body of the regional district) for review and consideration. The dilemma that the area director and concerned residents of the area found themselves in was twofold:

1. Each application represented a potential development of considerable complexity that would naturally be situated in an area that might differ in its biophysical characteristics and in its proximity to important environmental phenomena and to the homes of island residents. To carefully and intelligently review each application and comment critically upon its impact, both individual and as part of a cumulative effect, would take more time and resources than the area could possibly generate within 30 or even 60 days, the latter being the maxi-

mum time available for referral responses;

2. The manner in which the local community chose to deal with the influx of aquatic development was to attempt to formulate a coastal management plan: a comprehensive mapping and planning document that would govern the siting of future developments to minimize or avoid resource use conflicts. The problem that the local residents found themselves facing (and that remains a major problem at the time of publication of this annual report) was that such an exercise was both time-consuming and in some cases contentious, and stretched their resources, both human and financial, to the limit. While they were engaging in community meetings, planning, mapping, and formulating legal considerations which would ultimately form part of a comprehensive zoning proposal for the area, applications continued to be received and processed by Crown Lands. The citizens nonetheless continued their efforts, with the knowledge that any aquaculture facility established prior to a zoning scheme could not be removed by way of restrictive zoning: in such cases, the facility becomes what is known in municipal law as a "non-conforming use", and is legally entitled to remain in operation, adverse zoning notwithstanding.

What the citizens needed most was time. They wanted time to map, plan and organize without the continued influx of development which might render their zoning scheme a merely academic exercise. To that end, the Director of Planning and Development for the Comox-Strathcona Regional District (CSRD), writing on behalf of the Board of the Regional District, wrote to the Ministry of Crown Lands in Victoria advising that the Board had adopted a motion "requesting your Ministry to place an immediate moratorium on Crown Land and foreshore applications that are both presently on file and new applications for Quadra, Read, Maurelle, Sonora, East and West Redonda, Rendezvous, and Stuart Islands retroactive to September 1, 1988, so that zoning can be considered for these areas. We hope you can support this request."

In reply, a letter dated November 18, 1988, was sent to the Director of Planning and Development for CSRD from the Acting Regional Director of Crown Lands turning down the request for a moratorium, on the following grounds:

1. The process of preparing and establishing zoning bylaws required an unpredictably long period of time. The moratorium could cause a cessation of legal activity on Crown Land for months and possibly years;
2. The Ministry "is mandated to play a strong role in the economic development of Vancouver Island, in conjunction with the Ministry of State for the Island. The Board's resolution is tantamount to a request to forestall all economic development initiatives on Crown Lands and foreshore within its boundaries. This is not an acceptable position for the Ministry";
3. "Any such moratorium could result in a considerable increase in the problems of illegal occupation of Crown Land for both [the Ministry of Crown Lands and Comox-Strathcona Regional District]. It is likely that people would proceed without tenure on the assumption that it would be eventually be granted. If the development does not comply with the newly-created zoning, either we would be faced with removal or you would be faced with endorsement of non-conforming uses."

The letter ended with the following assurance: "I think you will find that over the past two years we have been very supportive of referral comments from the Board and have rarely adjudicated contrary to its recommendations. We will continue to place a high degree of emphasis on comments received from the Board."

The residents then brought their concerns to this office. The result, in the first week of May 1989, was a field investigation by an Ombudsman officer. In addition to a tour of the area to view net-pen facilities which had been established, the investigator met with officials of the Regional District and later with concerned citizens at a public forum held at the Quadra hall. Attendees at the public meeting were vociferous in their support of a moratorium. They argued that present lease allocation practices were inconsistent with the recommendations of Public Report No. 15, including

the recommendation that coastal management "should facilitate community planning and control". They also argued that continued referrals make a joke of the system of seeking local government input, because:

1. The only input from local government to which Crown Lands will accord priority is advice on existing zoning; the Ministry of Crown Lands will not consider proposed zoning as binding in any way;
2. Local government cannot, through its area representatives, do justice to the planning process if its attention is occupied with individual applications;
3. Likewise, the referral will usually have little content in response because, apart from citizen input, the Regional District will not have had the time or resources to comment with the appropriate thoroughness on the wisdom of siting an aquaculture facility or other commercial operation at the place proposed. As one individual stated at the meeting, "All our fingers are in the dyke; we have no more fingers."

Additional arguments along the same line included comments to the effect that the limited resources of the Regional District, and the time in which referrals must be submitted, meant decisions were made under great pressure and unreasonable compromises which did not reflect integrated planning. Other individuals argued that the impact on a small island community of the introduction of large scale business operations is disproportionate to that of an urban centre where the physical environment is less important. Some of the individuals in attendance at the meeting operated their own small businesses on the islands, and stressed that the local economy was composed primarily of small businesses and cottage industries that sought to preserve the sustainability of any enterprise. It was argued that large corporations making "off shore decisions" demonstrate no commitment to the community.

A review by this office of the efforts of the zoning committee for the local area showed that the efforts of the committee to date had been productive, detailed, and carried out in good faith. One individual with whom we met had served on the board of the Regional District and made some powerful observations about resource allocation and its relationship to the local community: with respect to planning, it was argued that there is no way in which a group of middle managers (referring to personnel of the Ministry of Crown Lands) can adequately deal with what is in essence a political issue. Conversely, elected representatives are overwhelmed by the complexity of the data, systems, and laws they must deal with. This individual observed that civil servants are not accountable for their decisions in the manner of elected officials. [This observation is consistent with traditional observations by our office about the responsibility of government to the individual, and the need for an office to attempt to enhance that responsibility.] This individual also noted that the traditional political ethos is structured from the top down. Such a structure is no longer completely appropriate, this person argued, for allocation of land at the local level — local government can do it better. It could perhaps be done by recognizing a provincial veto in the allocation process. In any event, "identifiable rural communities should be given structure and control."

We also held discussions with representatives with the Ministry of Crown Lands. The Ministry advised that there is a general presumption that individuals to whom referrals have been made will attempt to communicate directly with the applicant to resolve problems; in addition, it was noted that, at the time of discussion, four fish farm site applications had been refused by the Ministry of Crown Lands, even over objections from the Ministry of Regional Development, as a result of concerns expressed by the Regional District. As to comments about the operations of the Regional District, and in particular the area complaining of continued "invasion" by industrial development, the Ministry of Crown Lands noted that they had encouraged local zoning over two years previous to this latest request for a moratorium, and no activity had taken place at the local level. They also noted that the Regional District had not been sending recommendations via official Board resolutions, and that there appeared to be some degree of division of opinion among Board representatives as to the appropriateness of continued aquac-

ulture development in the area. Lastly, Ministry personnel noted what they believed to be something of a general phenomenon in relations between the government and individuals: individuals, for the most part, expect to be able to hand over their conflicts and related problems to government administrators, in the hope that this will result in a solution without any face-to-face involvement between the individual and the proponent of the development which they oppose. In other words, some Ministry personnel perceived a lack of initiative and resolve at the local level.

We considered carefully the honest, earnest and in some cases desperate requests for a moratorium that would cover all aspects of development of aquatic Crown land in this area. Undoubtedly to the disappointment of the complainants, our office concluded that a recommendation for a moratorium was inappropriate. We concluded that a moratorium would have amounted to the pre-judging of aquatic Crown land applications and would have had the effect of curtailing the continued operation of a system which, through aspects such as referrals, had at least the potential for fairness in the context of integrated resource management.

We felt that, having recently (December 19, 1988) made recommendations to the appropriate Ministries for refinement of the land allocation process, which included a recommendation to facilitate community planning and control, there should at the very least be an opportunity for the Ministries to apply these recommendations in practice. We recognized that changes to a complex administrative system take time. In the absence of demonstrable evidence that the land allocation system had broken down, we considered it inappropriate to intervene; in addition, a moratorium, by its very nature, could be seen to have a highly political element beyond the administrative jurisdiction of the Ombudsman.

Recent reports from the area in question indicate that the flow of applications and approvals continues relatively unabated. This office continues to monitor the situation and may make further recommendations as appropriate. (CS89-26)

Successful bid — on wrong lots

A complainant bid on Crown land at an auction in 1968; his intent was to purchase land for a future retirement residence. For his purchase he received a conditional title evidenced by a certificate of purchase — i.e., full ownership in fee simple was contingent upon his development of the lots beyond their former bare, unserviced state.

The complainant relied on information provided by an individual who appeared to be a surveyor in determining the lot numbers of properties he wished to purchase at the auction held by the Ministry of Crown Lands. This individual, who was not an agent of the Crown and whose name the complainant never learned, gave incorrect information. The result was that the complainant purchased marshland properties which were entirely different than those he intended to buy. We found that the Crown had made no misrepresentations during the course of the auction, nor could any basis be established for requiring the Ministry to enter into a trade to provide the complainant with the lands which he thought he had bought.

The complainant told us he had never bothered in subsequent years to question whether he might have purchased the wrong lots, as the assessed value shown on the tax notices was entirely consistent with the quality of land which he believed he had purchased. The converse of this is that he would not have expected this assessment to apply to marshland which would require extensive drainage and filling before building could take place. This matter was reviewed with the Assessment Authority, which agreed that the lands had been appraised at too high a price. A property tax overpayment refund was arranged for the complainant who, in any event, declared his intention to abandon ownership of these lands to the Crown, as they were of no economic benefit to him in their current condition, given the cost of improvements necessary to acquire full title. (CS89-27)

No Crown obligation to accept highest bid on land

The complainant's company was one of a number of bidders for residential development property in a municipality on Vancouver Island. A detailed information package had been made available to the bidders by the Ministry of Crown Lands, and in the section marked "public tender" the Ministry stated that it "is not obligated to accept any tender and reserves the right to reject all tenders and negotiate with one or more bidders."

Prior to putting the development property up for sale, the Ministry had obtained an independent appraisal. When the tenders were opened on the the stipulated date, the Ministry found that the high offer for the land amounted to approximately 60 percent of what the Ministry thought to be the fair market value. For that reason, all tenders were rejected and the property was added to the Ministry's Crown land sale inventory for offers and negotiations with any interested party.

The complainant did not think that this was fair; he felt that the Ministry, having entered into the tender process, should be bound by the results and honour the high bid, regardless of whether that bid was consistent with the Ministry's view of fair market value.

The land in question was ultimately sold, and the process leading up to the sale was the subject of a separate concern advanced by the complainant. The complainant, in subsequent negotiations with the Ministry, had offered a higher amount within 10 percent of the price being sought by the Ministry. In fact, three separate offers were being considered by the Ministry, and a competitive bidding situation of sorts developed immediately prior to closure of the sale. We found that the complainant's company had simply been outbid: another company had advanced a cash offer equal to the Ministry's asking price, and the deal was made. Our investigation showed that throughout its dealings with the various private parties, the Ministry had acted in good faith and with every attempt to keep seriously interested parties continuously informed of the Crown's position regarding the asking price for the property.

As to the complainant's concerns regarding the original tender process, we differentiated the process for sale of land from a situation in which individuals or companies are bidding on a "low bid" basis for a Crown contract. In the latter case, the Crown is attempting to obtain services or goods at the lowest possible price to the public purse, and is under a duty to ensure that a reasonable decision is made consistent with the best value obtainable — in most instances this will mean that the Crown will be bound to accept the lowest bid. In the case of a sale of land, the Crown is disposing of a public resource and is under a duty — moral if not legal — to ensure that the best possible price is obtained from the sale. In this latter context there is no "high limit", and the Crown is justified in reserving to itself the right to reject all bids if the highest bid does not reflect an adequate return to the public for the disposal of a previously publicly owned resource. On these bases, we could not substantiate the complainant's concerns. (CS89-28)

"Exorbitant" lot price too low by some standards

A change in the policy with respect to the terms on which Crown land would be made available to the public gave rise to a complaint from a man who had been renting a lakefront lot near 70 Mile House. Tenants were given the option either to buy their rental properties at market value or else to continue to lease at the increased rate. The complainant wished to purchase the lot, but he considered the Ministry's selling price to be unreasonably high.

The selling price was the value arrived at in an independent appraisal that was primarily based on an examination of sales of comparable properties in the neighbourhood. The price was supported by the land value established by the B.C. Assessment Authority (slightly higher than the stated selling price) and also by a sale of properties on the same lake that suggested the independent appraiser might have been low in his valuation. We learned there were close to a dozen appeals to the court of revision about assessed values of leasehold properties, none of which were successful.

We advised the complainant we were unable to substantiate his complaint and suggested that if he wished further assurance that the

price asked by the Ministry was not unreasonable, he consider getting together with other members of the leaseholders' association to retain the services of their own appraiser. (CS89-29)

Ministry of Education

Resolved	2
Not resolved	-
Abandoned, withdrawn, nonjurisdictional	5
Not substantiated	2
Declined, discontinued	2
Inquiries	8
Total number of cases closed	19
Number of cases open December 31, 1989	20

We continue to receive complaints about schools and school boards even though the Ombudsman has no jurisdiction to investigate either directly at this time. The Ministry of Education staff continue to co-operate with us so that we may provide information or assistance on these matters.

Section 11 of the new School Act introduces appeals by parents or students to school boards about decisions made by board employees. When callers contact our office to ask what can be done about a decision with which they disagree, we inform them of the recommended process. First, the concern should be discussed with the decision-maker or the principal. If there is no resolution at this stage, the caller may request an appeal by the board.

The Act gives the board the authority to refuse to hear an appeal unless the appellant discusses the decision under appeal with one or more persons as directed by the Board. This right appears to enhance parents' and students' abilities to challenge decisions with which they disagree.

A room with a loo

A teacher was sent to the University of British Columbia as part of an assignment to grade exams for several days. Rather than staying at a hotel, as he was entitled to and as some of his colleagues did, he chose to stay on campus in a private room in the residence facilities. When he later made his application for expense reimbursement, he found that he was paid only one half of the room cost. Attempts to obtain reimbursement for the other half, even though the total cost was less than that incurred by his colleagues, met with frustration. He sought our assistance.

We contacted the appropriate individual in the Ministry of Education, and the matter was resolved almost instantly. The problem was one of definition: the only private rooms available in the university residence were classified as "suites" because they contained private bathrooms. Unfortunately a "suite" was not within the definition of authorized accommodation, as it was generally held to be a hotel facility beyond that which was necessary for the accommodation of individuals on government business. Once it was made clear that the individual was simply staying in an ordinary room, payment was quickly arranged. (CS89-30)

School supplies not necessarily free - but free when necessary

A caller wondered if an amendment included in recent changes to the School Act meant that parents would no longer be expected to purchase school supplies for their children. His question came to mind after he noticed section 100, which reads in part:

> A board shall provide free of charge to every student of school age resident in its school district and enrolled in an educational program in a school ... (b) educational resource materials necessary to participate in the educational program...

The answer was a qualified no. The Ministry of Education had informed school boards that there was no intent to change from the usual practice in most school districts, by which pupils are asked to provide their own supplies at their expense. There is no reference in the Act to supplies the pupils own and use personally, such as pencils, pens, paper, gym strip, etc.

The changes in the Act were intended to ensure that a student not be prevented from taking courses such as home economics or industrial education course because of lack of ability to pay. Where basic expendable supplies are necessary for the course, these should be made available by the board. However, if pupils are to benefit personally from getting a dress or a coffee table to take home for personal

use, it is reasonable for the school board to expect the students to pay for the materials. (CS89-31)

Ministry of Energy, Mines and Petroleum Resources

Resolved	1
Not resolved	-
Abandoned, withdrawn, nonjurisdictional	1
Not substantiated	4
Declined, discontinued	5
Inquiries	4
Total number of cases closed	15
Number of cases open December 31, 1989	7

As in previous years, few complaints were received about the Ministry, and most of those that did come to our attention had to do with mineral tenures.

Access to placer lease denied

The complainant held a placer lease which had been issued by the Ministry in 1982 for a term of 10 years. Due to expansion plans, the mineral claim holder over the same land stated its intention to deny the complainant access to his placer lease for safety reasons.

The Chief Gold Commissioner and members of his staff had met with both the complainant and the mineral claim holder before the complainant contacted this office. Efforts at resolving the issue had not been successful. As the mineral claim holder was a large mining company, the complainant felt at a disadvantage and wanted this office to assist him in his dealings with the Ministry.

The jurisdiction of the Ombudsman's office was explained to the complainant. When there are alternative remedies available to the complainant, this office declines to investigate a complaint. Pursuant to section 10 of the Mineral Tenure Act, a dispute respecting the exercise of rights between recorded holders on the same mineral lands can be heard and decided by the Chief Gold Commissioner. Accordingly, the complainant was referred to this remedy. (CS89-32)

Wrongly located claims cancelled

An individual contacted the Ombudsman's Office with a complaint concerning the Mineral Titles Branch of the Ministry. The complainant alleged that over 60 mineral claims that he had staked had been cancelled by the Ministry for improper reasons.

Section 20(1) of the Mineral Tenure Act states that a claim shall be located in accordance with the regulations. The regulations state that a legal post must be firmly affixed to the ground but do not define what "firmly affixed to the ground" means.

The complainant generally wired his posts to trees. He claimed that this method met the requirement that the posts be firmly affixed to the ground, but that the Ministry had cancelled over 60 mineral claims which he had located for the sole reason that the posts had not been firmly affixed to the ground.

The regulations to the Mineral Act (as it was then) set out certain standards to be met when mineral claims are located. Mineral claims are to be marked on the ground by a legal corner post, identification posts, and corner posts. If, because of the presence of water or glacial ice or prevailing topographical conditions, it is impossible to place any of these posts as required, then the regulations require that an identification post marked "witness post" be placed as close as practical to where the legal corner post should have been placed.

A metal tag containing certain information must be affixed to the side of the witness post which faces in the direction of the legal corner post being witnessed. In addition, an identification post must be placed nearby in a conspicuous place and must be clearly and legibly marked with the distance and true bearing to the witness post. The ground between the identification post and the witness post must also be blazed and marked.

We reviewed the Ministry's inspection reports for 23 of the 60 mineral claims cancelled. According to these reports, no identification posts or location lines were found for 22 of the 23 claims. In every one of the 23 claims, infor-

mation was either missing from the tags or did did not correspond to the record information. These contraventions of the regulations provided ample grounds for cancellation of the claims. In addition, the inspector concluded that the posts for all 23 claims were not firmly affixed to the ground.

In some instances, posts were noted to be set upon the ground with a thin strand of wire loosely wrapped around a tree and the post. In other instances, the posts were found lying on the ground or loosely affixed by means of a rock cairn. In several instances, witness posts were in groups of up to 13 posts loosely wired to a tree.

The complainant had frequently used witness posts when there was no topographical impediment to the use of a legal corner post. The complainant had also omitted to place an identification post for 22 of the claims.

The Ministry had sent the complainant a copy of its inspection report of these claims and given him 30 days to respond. He did not do so. The complaint was determined to be unsubstantiated. (CS89-33)

Ministry of Environment

Resolved	36
Not resolved	-
Abandoned, withdrawn, nonjurisdictional	17
Not substantiated	25
Declined, discontinued	15
Inquiries	9
Total number of cases closed	102
Number of cases open December 31, 1989	49

Growing public awareness of environmental issues in recent years has been reflected in a gradually increasing flow of concerns brought to the attention of our office.

Hunters, fishermen skeptical of "special offer"

Fishing and hunting licence holders discovered an unexpected addition to the regulations mailed to them by the Ministry of Environment: a special subscription offer for a wildlife magazine. Junk mail is a sensitive issue these days, and it was hardly surprising that the insert should raise eyebrows, considering its source. The people who complained to us also thought it questionable that the government should give out their names to what appeared to be a private enterprise. It was, they suggested, an invasion of their privacy.

It turned out that the publisher of the magazine also had the contract to print the hunting and fishing regulations. A deal had been worked out whereby the publisher was given permission to make a "one time" solicitation offer in return for printing the regulations for a discounted rate, thereby saving taxpayers' money. In an effort to ensure there would be no continuing use of the mailing list, the Ministry arranged to release names and addresses to the distributor rather than to the publisher.

The action taken by the Ministry would have been unlawful had it been an agency subject to the federal Privacy Act. B.C. does not yet have such legislation to protect the interests of citizens dealing with the provincial government. Nevertheless, the deal struck by the Ministry — well-intentioned as it may have been — was clearly uncalled for, given that licence holders had been given no opportunity to indicate whether or not they wished their names to be released for commercial purposes. We suggested that the Ministry apologize to those who had registered complaints, and it willingly agreed. In addition, an assurance was provided that future cost-cutting ideas would not include arrangements of this type. (CS89-34)

Waste Management Branch

Gigantic garage alarms neighbours

When a fellow started building a large garage on his property, his neighbours were up in arms. They presumed he had plans to open some kind of repair shop. They petitioned the municipality to put a halt to the construction, but the building permit had already been issued. However, as the citizens appeared to be worried about possible pollution of their wells by oil and chemicals, the municipality relayed their concerns to the Waste Management Branch, which has the power to require a waste management permit when it has reason to believe an operation may produce hazardous effluent.

Waste Management officials, after looking over the site, told the garage owner he would need a permit. Now it was his turn to complain. Although he repaired his own vehicles as a hobby, he had no intention of operating a business, he told us. Why should he have to get a permit just because he had a bigger garage than the neighbours? If he had to get a permit, they should have to get permits too.

We were prepared to accept his point that he had no current intention to use his garage for anything other than storage, even though it was large enough to hold logging trucks. Although additional equipment had been installed to filter out oil and solid particle waste, the Branch questioned its efficiency and was concerned about the possibility of chemical

solvents being used in the repair and maintenance of vehicles. Waste Management officials had told the complainant that if he built a holding tank for effluent, he would then be released of the requirement to obtain a permit. Given the nature of the officials' concerns and the choices that had been provided to the complainant, we concluded that the Waste Management Branch had acted reasonably. (CS89-35)

The ash and sawdust feud

Problems with a newly installed blower in a sawmill operation in the Okanagan were brought to our attention by neighbours bothered by ash fall-out and blowing sawdust.

We discussed the matter with Ministry of Environment officials, who reached agreement on an ongoing eight-point air quality improvement program with the mill operator. Steps taken immediately included raising the sides of the conveyor belt leading to the burner, enclosing the sides of storage bins, creating a buffer zone between the residential area and the mill, and improving housekeeping by cleaning up and sweeping out the yard. The operator also retained a consultant to provide advice on longer-term measures to deal with the blower problem. The foregoing measures resulted in a marked improvement in the quality of the air, according to the complainant. (CS89-36)

Yet another environmental hazard: woodwaste leachate

Because of the potential environmental damage posed by the leaching of matter emanating from woodwaste products, the Ministry of Environment has introduced controls that curtail many of the uses to which it was formerly put.

A woman complained to us that leachate from woodwaste used as a foundation for a horse exercise area was damaging her property. Contributing to the problem was the natural grade of the land, which caused natural water runoff to flow down to the level on which the complainant's property was situated.

Ministry staff worked with both the complainant and the owner of the exercise area. Diversionary ditching was constructed and a water retention area prepared. This alleviated the problem, although other problems will continue until the natural decaying process removes all contaminants from the woodwaste. (CS89-37)

Water Management Branch

The waterpipe chainsaw massacre

When highway construction disrupted an irrigation ditch that had served the needs of an association of water users for over 80 years, the Ministry of Transportation and Highways replaced the ditch with an underground pipe, repaired the soil surface, and paid the landowner through whose property the pipe ran over $7,000 for "site disturbance and trespass". At the time, Highways raised with the landowner the possibility of securing an easement for the waterpipe — the customary means of providing legal sanction for the passage of domestic, irrigation or livestock water needs across a non-user's land. The landowner was receptive to the suggestion, and the issue was left at that.

About six months after the pipe was laid, the landowner, by a handwritten note, gave six months' notice that he intended to interfere with the passage of the pipe. He was not in the best of moods at the time, having been refused a water licence because of insufficient water to meet existing licensee allotments and having been denied approval of an application to rezone his property for mobile home park purposes. The water users' association consulted a lawyer and the Water Management Branch, and were led to believe that the handwritten note did not constitute the six-month notice required under the Water Act. Nevertheless, the association took the Water Management Branch's advice to negotiate with the property owner.

The landowner was not receptive. Instead, six months after delivering the note, in the presence of the water users he unearthed the pipe and succeeded in severing it with an

enthusiastic assault with a chainsaw and an axe. A vigorous round of fisticuffs ensued, and the local police were summoned to the scene. So were the licensing and enforcement staff of the Water Management Branch, whom the water users urged to order emergency repairs under the provisions of the Water Act, as families, crops and livestock were now without water. This request was not immediately met, due to doubt about the legal effect of the handwritten note, which, if consituting valid notice, might have justified the landowner's actions.

The water users immediately complained to us that the Water Management Branch had unreasonably failed to respond to their urgent — and, they argued — legitimate demand. Their second contention was that either the Highways or the Environment Ministry should take action to secure the easement.

Four days following the fight, by which time we were involved and criminal proceedings were being considered by the water users and by the Water Management Branch, the property owner, showing a change of heart, agreed to let the water users repair the pipe. This coincided with the Water Management Branch's decision that it was indeed appropriate to order repairs to be made. A new section of pipe was supplied and delivered by the Ministry of Transportation and Highways, a neighbour supplied machinery, and a local mine supplied men and other equipment.

This left the matter of the easement to be settled. A review of the Crown grant issued to a previous owner of the land in 1908 confirmed that the irrigation ditch was "excepted" from the grant in its passage "over, through or under" the land. Despite changes in ownership and a series of subdivisions over the years, legal authority for the conveyance of water above or below the ground remained unaffected, and the landowner had no right to interfere with it.

We concluded that the Ministry of Transportation and Highways, in improving the system by relocating the watercourse into a subsurface pipe and restoring the land surface, had assumed no legal obligations with respect to the system. Nor did the Water Management Branch have any such obligations, but because of uncertainties about the legal status of the handwritten note, and being unaware of the Crown grant provisions, the Branch had required a day or two to confirm its position. Finally, the water users ought to have determined the legal status of their watercourse long before the highway construction project took place.

Copies of the Crown grant and an identification of easement procedures were distributed to all parties, and counsel for the water users undertook to seek a final determination of the legal effect of the provisions of the Crown grant of 1908. (CS89-38)

A lemon from the start

An official from a public water utility complained when the Water Management Branch refused to provide funds to correct deficiencies in a subdivision's lake-fed water system. Although the subdivision was approximately six years old, the lot owners had experienced difficulties with the system almost from the start because of a cantankerous water tank.

The system had been approved under regulations to the Local Services Act which require a subdivision developer to deposit money with the Water Management Branch to be held as a "construction trust fund" sufficient to cover the estimated cost of the water system's completion. In addition, the Branch sets a fee on each proposed lot — in this case, $200 — to be held in a "maintenance reserve fund".

Flaws in the construction of the cement holding tank caused it to leak, and an intricate electronic system used to maintain the water level in the tank broke down and then froze. The developer did partial repair work to eliminate the freezing problem, then managed to divest himself of further responsibility by assigning ownership of the utility to the water users — namely, the owners of the developed lots in the subdivision.

When the water users asked the Water Management Branch to release money that remained in the construction trust fund to repair the tank, their request was denied on the basis that, given the age of the system, what they were really seeking was funds for maintenance, which the construction fund was not intended to cover, even though the current

problems had their source in poor workmanship in the tank's construction. The maintenance reserve fund, despite its name, could only be used for operating expenses, and so was not available as a source of funds either.

The property owners did much work at their own expense, but the major, expensive repair still left to be done was the building of a liner for the tank. During our discussions with the Branch, it was agreed that with the system now being six years old, no new construction was needed. Therefore discretion could be applied and any funds remaining in the construction trust fund could be released to assist with purchase of a liner.

Thus was provided a solution to a protracted series of inherited difficulties. We found the Ministry had acted reasonably throughout the long process. (CS89-39)

Wildlife Branch

Lotto hunt

A hunter questioned the fairness of the administration of the limited entry wildlife hunt. Neither he nor any of his friends had succeeded in having an application to participate approved, yet he had heard that some applicants were successful almost every year.

The Wildlife Branch provided an explanation that solved the mystery. The size of the game population varies in different areas within the province and can fluctuate rapidly in individual species according to factors such as the prevalence of disease, climatic conditions, and availability of feed. In an attempt to prevent species populations from becoming too low or too high, an analysis of statistics and biological factors is conducted annually for each area to set quotas by number, sex and age. The allowable kill may be high in one area and low in another. The number of applications tends to be constantly high, and a computerized draw is considered the most fair means of issuing licences for limited entry hunts. Clearly the complainant and his buddies had not had the luck of the draw.

As an illustration of regional variation in the numbers of limited entry permits, in the complainant's area (Vancouver Island) the ratio varied between a low of 8.5 and a high of 62 applicants per allowable kill, while in the Kootenays the range was primarily between 0.1 and approximately 6.

The draw process seemed to us a fair system under the circumstances, and the caller agreed when we explained it to him. (CS89-40)

Charge dismissed, exhibit seized

A hunter charged with illegally hunting moose complained to us when the seized meat was not returned to him after dismissal of the charge in court. A variety of circumstances can result in forfeiture of an exhibit. The reason in this case was that the complainant had not exercised due diligence during the hunt - a reason allowing forfeiture.

We advised the complainant how to appeal to the Environmental Appeal Board, a remedy available to him under the Wildlife Act. (CS89-41)

Buffaloed by the meaning of bison

In 1971 a man bought 47 plains bison from the federal Department of Indian and Northern Affairs and moved them from Alberta to a northern B.C. ranch, where he planned to build up the herd. Up to this time, apparently, plains bison had been extinct in B.C. for a number of decades.

In due course the bison began to roam onto Crown land, and the rancher applied, unsuccessfully, for a grazing lease. In 1975 the provincial cabinet issued an order-in-council declaring that the bison species described in *Mammals of North America* were wildlife, pursuant to section 78 of the Wildlife Act.

In 1980 the rancher was charged with being in possession of wildlife without a permit, contrary to the provisions of the B.C. Wildlife Act. The rancher maintained that he always had control of the herd, which, he said, regularly returned to the ranch to winter, graze, get salt, and bear their young. The provincial court judge who heard the case acquitted the rancher, ruling that the bison were not wildlife but domestic animals. He found that the bison defined by the order-in-council were either dead or extinct and that therefore the rancher's

bison could not fall into the class defined by the order-in-council.

In 1982 the Crown offered to buy the bison, but decided not to complete the purchase after the government introduced its restraint program in 1983. In January 1985 the Ministry of Environment issued a wildlife possession permit, the terms of which the rancher rejected, claiming that he needed no permit for the possession of his own property. Six months later he sold the herd to another man.

In 1986 the Crown began an action, naming both men as defendants, in which it sought a declaration that the Crown owned the bison and injunctions restraining the defendants from interfering in any way with the bison. An interim injunction was granted that permitted the bison to be herded but not hunted or transported. In 1987 the B.C. Supreme Court ruled that while the bison had been domestic animals prior to 1975, the order-in-council had extinguished any proprietary right held by the rancher. The court said it could not consider the granting of compensation to the defendants, as the action had been framed in a manner that precluded such consideration.

The defendants appealed the ruling to the B.C. Court of Appeal. Extensive arguments were prepared to demonstrate that the 1980 provincial court ruling should stand and that the bison remained private property. Two months before the appeal was to be heard, the owner of the herd contacted our office to inquire whether we would consider helping the parties achieve a settlement. He told us that the herd had by now grown to over 600 head, each of which was worth about $2,000.

Ordinarily, our office does not intervene in matters that are currently before the courts. However, it became apparent to us that this proceeding had the potential to be lengthy and very expensive for the government and the complainant, and that the possibility of an alternative dispute resolution with the assistance of our office deserved to be explored, given that both parties indicated a willingness to negotiate a settlement.

The Crown was faced with a difficult position. If the Court of Appeal were to decide that bison were wild animals at common law, then all such animals brought into the province at any time would be considered to be the property of the Crown, and there would be no question of negotiating compensation with the appellants. However, if the court were to rule that the bison had been domestic animals prior to the Crown's effective expropriation of them by statutory right in 1975, the Crown would then be faced with the possibility of having to pay compensation for a greatly expanded herd, in addition to a protracted and costly series of proceedings.

After reviewing the history of the dispute and meeting with the parties, we suggested that the Crown consider making an offer to recognize the private ownership of a number of bison equal to the number calculated to have been in existence at the time the 1975 order-in-council was passed. These animals could then be removed to private land, with the remainder remaining on Crown land to be managed by the Ministry of Environment. This suggestion had apparently not come up in previous negotiations between the parties.

Following further discussions, the parties reached an agreement under which the herd owner received a permit allowing him to remove 200 of the bison from northern B.C., where they are still on the range, and withdrew any claim to the remainder of the herd. (CS89-42)

Ministry of Finance and Corporate Relations

Resolved	26
Not resolved	-
Abandoned, withdrawn, nonjurisdictional	19
Not substantiated	39
Declined, discontinued	12
Inquiries	8
Total number of cases closed	104
Number of cases open December 31, 1989	143

With the notable exception of the Principal Group investigation, issues dealt with by our office in 1989 focused primarily on taxation procedures.

Hold the phone — here comes the taxman

Several complaints were received from parties served by the Northwestel Telephone Co., which operates in northern B.C. and the Yukon, alleging that extra charges were added to their bills without justification.

It turned out that an audit by the Ministry of Finance had noted that, through oversight, Northwestel had failed for a number of years to collect from its B.C. customers the B.C. social services tax, which is applied to all users of telephone services. The company, being responsible for ensuring the tax was paid, passed the expense on to its customers by charging $25 monthly payments, rather than a lump sum, to ease the pain.

The oversight was unfortunate, but the payment by installment provided a reasonable means to ease financial hardship that was consistent with the legislative provision allowing for collection over a three-year backdated period. Although an aggravation for the customers, it was reasonable for the taxes to be collected in this manner from customers who had already received the services to which the tax applied. (CS89-43)

Taxed twice on land trades

A man and his neighbour decided to trade properties of equal value with each other. A few months after registering the transaction at the land registry office and paying the 1 percent property purchase tax, they decided to trade the properties back again. On applying to change the registration back to the original owners, they were once again charged the property purchase tax. They considered this most unfair, not only because no money had changed hands but also because, in the end result, the properties hadn't changed hands either.

We concluded that the requirement to pay the tax twice was reasonable, as legal transfers of the properties had been effected in each instance. The Property Purchase Tax Act contains no provision for refunds of the tax when land transfers are reversed. While barter of an informal nature may be a way of evading the taxman, the act of making an exception for property paid for in kind rather than cash would create unfair and unequal treatment. In either case, consideration is paid, and the same tax consequences should follow. Likewise, a buyer who decides to resell — or trade back — property to the original seller cannot expect to escape the tax consequences that follow such a sale. (CS89-44)

Extra step ensures tax-free purchase

A veteran and his wife who jointly bought a property under the federal Veterans Land Act ran into problems when the time came to close the agreement and transfer title. Although the husband, as a qualifying veteran, was allowed an exemption from payment of the 1 percent property purchase tax, the couple was told they would have to pay the tax on half the property, representing the wife's share.

We contacted officials at the Income Taxation Branch of the Ministry of Finance and Corporate Relations, who suggested a simple solution: the husband could register the property in his name without paying the property

purchase tax, and at the same time transfer his wife's share of the property into her name for a nominal registration fee, thus avoiding the payment of the tax. This was done, and the deal went through to everyone's satisfaction. (CS89-45)

Tax jump follows incorrect land classification

A man who had been working away from home for three months returned to find a notice from the Ministry of Finance stating that his land would be subject to forfeiture if property taxes were not paid by a certain deadline — which happened to be three weeks later. The complainant believed that this rather shocking development was a result of incorrect classification of his land, which he contended should be designated agricultural rather than residential and accordingly taxed at a lower rate than the Ministry's assessment indicated.

Upon investigation, we learned that there were two parcels of land involved — one owned by the complainant and the other leased by him from the Crown. We also learned from the government agent in the area that the onus under the Taxation (Rural Property) Act lies on the owner or occupant of land to show why a property should not be taxed as residential. In addition to contacting our office, the complainant had hired a lawyer for this purpose.

The Ministry, on reviewing the situation, conceded that the complainant was right and changed the classification to agricultural. The result was the negation of all outstanding taxes and a cash refund to the complainant to balance the account. The complainant was pleased with the resolution. (CS89-46)

Tax arrears demanded, landowner cries foul

A property owner told us she was being held responsible for taxes which had accrued prior to the date when she had purchased her property. At the time of the sale, her lawyer had performed all the customary tax searches to determine precisely what taxes were outstanding and what taxes could be expected to be paid in the future, and to whom. After the purchase, the complainant was informed that taxes had been miscalculated and that an additional amount of approximately $900 was due and owing. She felt she should be liable only for those taxes that had been indicated by the provincial government to be due as at the date of her purchase.

Upon investigation, we learned that the error had originated when the B.C. Assessment Authority had, for tax purposes, amalgamated the two lots that formed the complainant's property. One portion had been classified residential and another seasonal and recreational. Tax on only one of these classifications had been paid.

Notwithstanding the error, we focused on the complainant's contention that she should not be liable for tax which had accrued prior to the purchase of the property, and for which another individual should rightly be responsible. After discussions between our office and the Real Property Taxation Branch of the Ministry of Finance and Corporate Relations, the Ministry agreed with the complainant's point of view, and taxes were assessed only from the date on which the conveyance of the property to the complainant was completed. The complainant was advised that any other outstanding taxes would be sought from the previous owner. We considered this to be a fair resolution. (CS89-47)

Tax arrears catch up with peregrinating homeowner

A woman questioned the fairness of property tax arrears levied over a period of several years. After purchasing a home in the Comox-Courtenay area, she used a general delivery mailing address. When she then moved to Alberta for a year, her mother's address in the Courtenay area was used for mail delivery, until she returned to B.C. and adopted a general delivery mailing address. During this time the only tax notices received by the complainant were from the local improvement district; these created in the mind of the complainant the impression that no other taxes were owing.

The policy of the Ministry of Finance and Corporate Relations is to send tax notices to the last address shown either on the tax file or on the property title at the land title office. This latter address was used by the Ministry to

mail notices to the complainant. Invariably the notices would be returned by the post office after 15 days.

We considered the Ministry's practice reasonable, as it could not be expected to employ detectives to search out the whereabouts of every individual owing rural property tax. Nor could it be said that the tax should be paid by someone else, such as a previous owner of the property. Although the tax arrears came as a genuine surprise to the complainant, we could not characterize the tax claim as unfair. Hence we were unable to substantiate the complainant's concerns. (CS89-48)

Taxes unpaid, lots seized

As a result of family illness, a Calgary resident who owned two lots in an improvement district on Vancouver Island neglected to attend to the payment 1985 and 1986 taxes on the properties. She also failed to respond to notices of impending tax sales (property forfeitures), which were commenced and completed by the improvement district.

As is typical of property forfeitures, the market value of the two lots — approximately $44,000 — was much greater than the amount of taxes owing, which were in the neighbourhood of $1,100. The woman considered the seizure of her properties a great injustice and brought her concerns to our office.

With the assistance of the Ministry of Municipal Affairs, we managed to negotiate a compromise. Improvement districts, municipalities and regional districts are not yet within the investigative jurisdiction of our office due to the fact that the relevant schedule to the Ombudsman Act remains to be proclaimed; nevertheless, the Ministry welcomed our involvement to find a resolution.

The complainant was pleased when the improvement district, using its authority to sell forfeited property pursuant to the provisions of the Municipal Act, accepted a bid by the complainant to reacquire one of the forfeited lots for an amount equal to the outstanding taxes plus the expenses incurred by the improvement district to the time of resale.

However, this was not the end of the matter. Similar concerns brought to our office by other individuals caused us to re-examine the circumstances surrounding the forfeiture, which had been effected pursuant to section 838 of the Municipal Act, which addresses forfeiture procedures for improvement districts only.

The section is remarkable in that it authorizes improvement districts to hold a tax sale once a year to sell at public auction "all the land on which there are taxes owing to the Improvement District for 24 months or longer at the date of the sale." The section requires the improvement district to serve on each registered owner of each parcel of land, not less than 60 days before the date fixed for annual tax sale, a notice of pending tax sale, stating a description of the land for which the taxes are owing, the amount of all taxes owing including interest to the date of the tax sale, amounts chargeable as expenses in connection with the tax sale, and other elements intended to give the registered owner full and complete notice of the potential application of this very serious remedy.

The unusual aspect of section 838 is that, unlike other tax forfeiture provisions, it provides for an immediate forfeiture absolute — that is to say, there is no redemption period following forfeiture during which the registered owner can redeem his interest in the property by payment of the outstanding taxes and fees. Thus there is really no remedy for the property owner, which makes the tax sale as a vehicle for collection of outstanding taxes all the more severe and potentially unjust. With this aspect in mind, we re-examined the circumstances leading to the loss of the two lots in the improvement district.

Although we were without jurisdiction to investigate directly, the improvement district was co-operative in providing information about the process leading up to the tax sale. We learned that the required tax sale notice under section 838 of the Municipal Act had been delivered to the complainant's address in Calgary by double registered mail; it had not been "served" as required by the Act. Service, in the legal sense, requires that a process server identify the person to be served ("Are you Mrs. Bloggs?") and personally deliver to that individual the necessary document. It is then common practice for the process server to

complete an affidavit swearing that the document, a copy of which is usually attached to the affidavit, was personally served on the intended recipient at a certain time and place. This becomes all the more important when an extraordinary remedy such as that created by section 838 is being employed, and it is long-established practice for the courts, when considering the application of such a remedy, to demand letter-perfect compliance with the technical requirements of the statute relating to service, contents of the notice, period of notice prior to sale, etc.

Due to the fact that our office was without jurisdiction, the complainant was advised that she should seek independent legal advice if she wished to take further action. Our concerns regarding service and procedures to be employed in the application of section 838 were communicated to representatives of the Ministry of Attorney General, who then contacted the Ministry of Municipal Affairs for further discussion.

As a final note, it is worth stating that an additional notice, not required by the Municipal Act, had been mailed to the complainant's Calgary address by the manager of the improvement district section for the Ministry of Municipal Affairs. The letter was mailed as a courtesy and set out in plain language the complainant's position, the seriousness of the situation, and the nature of the remedy which could be employed by the improvement district. The complainant did not pay adequate attention to this warning due to family health problems. While this notice did not constitute the required notice under the provisions of section 838, it was nonetheless a useful supplement to provide a timely warning of a very serious situation that carried with it the potential for financial disaster. Although the legislation may certainly be questioned for its severity, the Ministry is to be commended for an approach that offers the property owner an extra measure of timely warning. (CS89-49)

Land forfeiture unwelcome surprise

A woman told us that her estranged husband's failure to keep a commitment had caused property in which she held a joint interest to be forfeited for non-payment of taxes. At the time of their separation in 1981, it was agreed that the husband would live on the property, maintaining it and paying the taxes. The forfeiture occurred in 1985, but the woman, who had moved to another community, didn't find out about it until 1988.

Section 38(7) of the Taxation (Rural Area) Act requires the Surveyor of Taxes to provide notice of forfeiture for unpaid taxes to the owner of the property and to each registered charge holder by

"(a) mailing it to the person entitled to it at that person's last known address or to the address of that person which is specified in the records of the land title office, or

(b) publishing it in the Gazette and in at least one newspaper of general circulation in the Province and one newspaper of general circulation in or nearest the area in which the property is situated."

Notification in the manner described by clause (a) had been given by mailing it to the address of the property in question. As the woman had not changed her address on the land title records and as her husband did not forward the notice to her, she remained unaware of the impending proceedings.

Forfeiture of property for unpaid taxes represents considerable loss to the owner. Land values are normally high, as may be investments to improve the property. In relative terms, unpaid taxes are low.

Although the legal process had been followed, in view of the unfortunate circumstances facing the complainant the Ministry agreed to our suggestion for a compromise to alleviate her hardship. The options included offers to the complainant to purchase the property or have the Ministry sell it, retain the tax value plus administrative costs, and return to her the balance of the proceeds. In the end, an arrangement was reached whereby the Ministry undertook all the administrative processes to dispose of the property and provided the woman with 50 percent of the balance, which was equivalent to her interest in the property. (CS89-50)

Ministry of Forests

Resolved	21
Not resolved	1
Abandoned, withdrawn, nonjurisdictional	18
Not substantiated	22
Declined, discontinued	9
Inquiries	3
Total number of cases closed	74
Number of cases open December 31, 1989	39

Considering the importance of the forest resource to all British Columbians and the number of people affected, directly or indirectly, by Ministry decisions, the complaints received by this office were relatively few in number. A public report describing this office's investigation of favouritism by the Ministry to Doman Industries was released in the spring of 1989 and is the subject of comment in the introductory section to this report. The Doman report, while finding no evidence of favouritism, identified the need for improved communication between different levels of the Ministry as well as improved interministerial communication and planning as a step towards a meaningful integration of resource management.

Bulldozer, spare those trees

A frequent role of this office is to clarify misunderstandings that occur when information is either not clearly communicated or else misheard or misread by the recipient. Such misunderstandings can lead to ill feeling that hampers further communication and may result in a needless waste of time and energy. As an uninvolved third party, we often have the advantage of setting matters straight through a simple phone call to "get the facts".

The operator of a post and pole manufacturing company complained that the Ministry of Forests planned to bulldoze an area of pine beetle infested timber that he could profitably harvest. The same understanding was shared by a business colleague.

Ministry of Forests officials, who had previously met with the complainant to discuss bidding opportunities, assured us that they had no intention of bulldozing the trees and had scheduled a further meeting with the complainant and his colleague to indentify areas open for bidding. On learning this, the complainant said he may have misunderstood what was said during the earlier meetings and expressed appreciation for the rapid clarification. (CS89-51)

A high price for information

A "concerned citizens" group asked us to review Ministry of Forests policy on access to information used to support applications by the Ministry to the Pesticide Control Branch of the Ministry of Environment for pesticide use permits. The group had appealed to the Environmental Appeal Board against the granting of five such permits to the Ministry.

The issue related more to the cost of information rather than access to it. The group had requested photocopies of field cards, regeneration surveys, summaries and reports of site history, soil gradation, proximity to waterways and species of vegetation. The Ministry had agreed to supply the information but insisted that a Ministry technician would be needed to identify, retrieve and interpret the information to ensure it was accurately communicated. For his services, calculated at 24 hours of labour at a cost of $50 per hour, the group was charged $1,200.00. To a group composed entirely of volunteers, with no sources of funding other than their own pockets, the cost seemed prohibitive and unreasonable.

Cost recovery by government is necessary for economy and efficiency, and may constrain unnecessary demands for information that can impede the day-to-day functions of a Ministry. Inflexible interpretation of policies relating to cost recovery, on the other hand, may put costs beyond the reach of legitimate claimants such as the complainants, whose objectives were arguably in the public interest.

The Ministry acknowledged a 1988 commitment to public consultation as part of its long-term brush control process. The solution in this case was a compromise by which the

Ministry agreed to permit a group member to review non-confidential files in consultation by telephone with an independent forestry expert. The final cost to the group would be $100 for photocopies at 25 cents per copy. The Ministry also agreed to review its policy and to explore the feasibility of a more economical disclosure method involving a consolidation of support material on pesticide use applications for easier and faster retrieval. (CS89-52)

Silviculture monitoring criticized

Spacing, as a silviculture activity, involves cutting down brush, inferior tree species and competing juvenile trees that threaten the health or growth rate of a "crop tree" that is being nurtured towards the stage where it is "free to grow". A tree that reaches that stage stands above its competitors and will naturally win any competition against other vegetation for the nutrients it needs.

The complainant's company was awarded a spacing contract by the Ministry of Forests as a result of a competitive bidding process. Performance of the contract was monitored continuously by representatives of the Ministry. Performance assessment was made by way of "check plots" in which a circle of a specific radius would be established at random in the performance area. Density of trees, damage to crop trees and inadequate cutting of brush or "weed" trees would be reviewed. Contract requirements were set out in a written document with reasonable precision. The contractor felt that administration of the contract by Ministry personnel in the field had been harsh and arbitrary, with ambiguous directions both from Ministry personnel and in the written contract. As in most cases, the bottom line was financial: the contractor had not been paid for certain work that had been assessed by the Ministry as substandard or inadequate.

The Ministry stated unequivocally that numerous errors were made by the contractor in leaving vegetation that should have been cut, and in destroying crop trees that should have remained untouched. Our investigation was a painstaking process involving review of all Ministry file materials, which had become somewhat voluminous as a result of disputes occurring over the life of the project, and careful comparison with the complainant's detailed allegations. In the result, we were unable to substantiate the complainant's concerns. There were some inherent weaknesses in the investigative process: where services are being performed in an environment that is by definition dynamic (everything is growing), disputed facts become almost impossible to determine if one looks for evidence in the field. Consequently, we took the view that we had to rely upon available evidence recorded closest to the time at which the disputes occurred.

We found that, for the most part, the only statistical evidence available was the Ministry's check plot record cards and detailed notes made by Ministry personnel in the field. Findings of these personnel were generally communicated quickly to representatives of the contractor, who, almost without exception, did not dispute these observations. The contractor did not have his own system of check plots for performance control.

Ministry review of the contractor's performance would have allowed the Ministry to terminate the contract in its entirety, if it so desired, without compensation to the contractor. If the Ministry had chosen this route, we might have supported such a cancellation on the principle that the terms of the contract were clear and entered into by both parties without compulsion or coercion. However, the Ministry chose a different route as a somewhat conciliatory gesture: partial payment was made, corresponding to the percentage of the project successfully completed. Although the contractor remained unhappy, we considered the Ministry's conduct to be fair and reasonable. (CS89-53)

Compensation demanded from zealous firefighters

When a fire broke out in a wooded part of the complainant's property, the Ministry of Forests office at 70 Mile House was called to help fight it. The reaction was apparently swift and effective in suppressing the blaze. However, a bulldozer utilized to create firebreaks, in the opinion of the complainant, caused more damage than was necessary to effectively control the spread of the fire. In particular, portions of a fence that showed no signs of fire damage had

been bulldozed and left open.

The complainant brought his concerns to this office after compensation for the fence damage was denied by the Ministry. The Ministry initially explained to us that the fence was in such a worn out state that it did not really qualify as an "improvement" to the property, for replacement purposes. In addition, the Ministry felt that fire damage to some areas of the fence served as evidence to show that it was appropriate to carry out fire suppression activities in the area, as a result of which about 40 feet of fence was torn up, according to Ministry estimates.

After further investigation and negotiations, the Ministry agreed to replace the bulldozer-damaged sections of fence and did so, for which the complainant was appreciative. However, the complainant was still concerned about a pile of dirt and debris left on his property after fire suppression operations. Further investigation by the Ministry cast doubt on whether this debris was entirely the product of fire fighting operations, as some logging had recently been carried out on the complainant's lands. The Ministry did not consider it necessary or appropriate to take further corrective action, and we agreed. (CS89-54)

Notice of meetings on TFL conversion

In January 1989 the Ministry of Forests announced that it would hold a series of information sessions throughout the province on the policies and procedures for the conversion of Forest Licences to Tree Farm Licences. A Vancouver resident called our office to complain that there had not been sufficient notification of the session held in Vancouver on March 8, 1989.

Discussions with the Ministry's Public Affairs Branch revealed that the initial advertisement announcing the dates and times of the public information sessions at eight different locations was placed in 104 daily and weekly newspapers throughout the province between February 7 and 17, 1989. This advertisement appeared in the February 8 edition of a Vancouver daily newspaper. An additional advertisement outlining a change in the previously announced session times for Vancouver and Parksville ran in 46 papers, including the Vancouver newspaper, on March 2, 1989. These print advertisements were supplemented by five announcements on both March 6 and 7 on five different Vancouver area radio stations. In addition, there was widespread media coverage of this issue and the times of the local sessions.

Given the extensive advertising of these public information sessions, the complaint was found to be unsubstantiated. (CS89-55)

Conflict over clearcutting

Forested land in B.C. is valued for a variety of human uses, including timber extraction, mining, trapping, consumption of water for domestic and agricultural purposes, and recreation. As the population increases and becomes more mobile, the potential for conflict among these uses increases, as evidenced in recent years by the growing number of controversies over forest land management.

The extraction of timber has been the mainstay of the British Columbia economy during most of the province's history. Early in the twentieth century, the Legislative Assembly enacted legislation to allow for the leasing of the majority of forested land in the province to companies for timber extraction purposes. The Ministry of Forests, as the agency issuing those leases under the Forest Act, became the primary authority responsible for planning the management of Crown forested land for logging and all other uses.

A company in the southern interior of the province was a long-term holder of a forest licence in a Timber Supply Area. For years it had conducted its operations primarily in locations some distance from inhabited areas. In time, however, as accessible and productive timber became scarce in the more remote locations, the company began to apply for and receive cutting permits along the sides of a lake valley in which were situated several communities. Alarmed by the growing number of clearcut patches visible from the lakeshore, local residents formed groups to provide organized opposition to clearcut logging in the valley. Their concerns included possible negative impacts on water supplies, on wildlife habitat, on fish populations in the lake, on

recreational uses such as hiking and cross-country skiing, and on the natural beauty of the landscape.

A Chamber of Commerce in one of the communities complained to us that the Ministry of Forests was failing to monitor the company's logging operations properly and was not adequately taking into consideration the interests of local communities in planning the allowable annual cut (AAC) for the Timber Supply Area. The Chamber was particularly concerned about the impact of extensive clearcutting on the tourism industry. The valley, with its spectacular views, had become a popular destination for visitors from other parts of Canada and from the United States. The Chamber had commissioned comprehensive studies to demonstrate that tourism had the potential to provide more jobs in the region than the forest industry - provided that the effect of clearcutting on scenic vistas didn't deter tourists from making the valley their destination.

When we began our investigation, it became apparent that some of the concerns expressed by the Chamber were related to changes in regulations and policy that had placed on the company responsibilities previously held by the Ministry, including the responsibility for responding to public concerns about harvesting plans and practices. Letters from the Chamber and from citizens' groups to the company had gone unanswered for months, and some residents had become so frustrated with the communication breakdown that they were planning civil disobedience strategies.

Company officials told us that they had made every effort to respond to citizens' concerns, including conducting tours of areas where logging was either planned or currently taking place, but some of the residents' demands were so unreasonable and so threatening in tone that the company had given up dealing with them. The company also noted that the membership of the citizens' groups and the Chamber of Commerce appeared to overlap to such a degree that the company was never quite sure who it was dealing with and whether it was wasting time providing duplicate responses to the same individuals.

To complicate matters further, neither the company nor the Chamber were sure just what the company's and the Ministry's respective responsibilities were, under the new policy, in responding to public concerns, amending harvesting plans, and monitoring the practices of contractors who had been hired to build roads and landings in areas to be harvested.

Ministry officials told us they were concerned about the company's reluctance to communicate with the citizens' groups and were attempting to deal with the problem by holding up cutting permits where it appeared that public concerns had not been properly addressed.

As it appeared that the communication breakdown was worsening in spite of the Ministry's actions, we suggested to all parties that a meeting be held to discuss the concerns that had been brought to our attention. It was arranged that the company, the Ministry, the Chamber and the citizens' groups would each send two representatives to discuss a preset agenda comprising the concerns considered most important by each party. At the request of both the company and the Chamber, we agreed to attend in a mediatory capacity on provision that the meeting be chaired by the Ministry's District Manager for the Timber Supply Area.

The meeting was held in the community hall of the settlement where the Chamber was located. By consensual resolution, an agreement was reached by which the citizens' groups and the Chamber would each name one representative as a contact person through whom all future communications would be channelled and to whom the company would send its development plans and preharvest silviculture prescriptions for review. The company agreed to respond promptly and thoroughly to all inquiries from these contact persons, to investigate all complaints about its operations and either rectify alleged faults or sufficently explain its reasons for not doing so. In addition, the Ministry provided a precise description of the company's responsibilities under the new Silviculture Regulation.

The meeting did not create an atmosphere of trust likely to satisfy completely the concerns of either the Chamber or the company. It did, however, provide a means of ending the communication breakdown and clear away the

confusion that had existed about the division of responsibilities between the Ministry and the company.

In subsequent meetings with Ministry officials, we discussed the Chamber's concerns with respect to participation in the process of planning the volume and area of the allowable annual cut. The Chamber thought it unreasonable that the Steering Committee for long-term planning for the Timber Supply Area included only Ministry and forest industry representatives. The Chamber described the Ministry's "public involvement policy" as tokenism, designed solely to placate other users of forested land while retaining decision-making power in the hands of the Ministry and the forest companies. The Ministry explained to us that the Chamber misunderstood the process. The Steering Committee was merely an advisory committee, with decision-making power remaining in the hands of the the Ministry. The purpose of the public involvement process - which provided for the presentation of citizens' input at public meetings at several stages in the planning process - was to ensure that all forest users' concerns were given proper consideration before planning decisions were made.

Evidence that the Ministry had already begun to respond to public concerns about clearcutting was provided by the recent implementation of "visual management guidelines" - an elaborate system by which clearcut breaks in the forest were required to become progressively smaller depending on the degree of their visibility from the lakefront. These guidelines represented an innovative step by the Forest Region that was later to be applied in other parts of the province. The effect of the guidelines had been a reduction in the allowable annual cut - a result which the company told us was already having a negative impact on its operations.

The Chamber was appreciative of the guidelines as a first step, but argued that they did not go far enough. It said that the Ministry should be taking steps to eliminate clearcutting - except where necessary to control disease - and require selective harvesting in its place. The Chamber maintained that clearcut areas on the sides of mountains overlooking the lake could never be successfully replanted because seedlings would not survive on steep slopes prone to erosion and direct exposure to the sun. It produced evidence which it said showed that selective harvesting was far more conducive to ensuring sustainable development than was clearcutting, slash-burning, and replanting with a monoculture. It further maintained that the company's argument that it might go out of business if restricted to selective harvesting was true only because the company had no incentive to purchase equipment necessary for selective harvesting, which was already being used with great success in jurisdictions where clearcutting was either banned or much more restricted than in B.C.

The Ministry advised us that it had no reason to believe that clearcutting - with the kinds of limitations that had already been put in place by the visual management guidelines - was not the most effective means of managing the forest resource for sustainable development.

The debate regarding the respective merits of clearcutting and selective harvesting, like so many issues related to forest management, is fuelled by the contradictory opinions of "experts" employed by both sides of the argument. Our office has neither the expertise nor the resources to draw conclusions on such issues. Nor would it be appropriate for us to do so. It is not within the authority of our office to examine the scientific merits of decisions arrived at through administrative procedures. We do, however, have an obligation to ensure that those procedures comply with the legislation that authorizes them and with the principles of administrative fairness.

Section 4(c) of the Ministry of Forests Act provides that it is a purpose and function of the Ministry to plan the use of the forest and range resources of the Crown, so that the production of timber and forage, the harvesting of timber, the grazing of livestock and the realization of fisheries, wildlife, water, outdoor recreation and other natural resource values are coordinated and integrated, in consultation and cooperation with other ministries and agencies of the Crown and with the private sector.

A Ministry policy drafted pursuant to this section stated that "Planning processes must exhibit equity and fairness in the considera-

tion of economic, social and environmental factors. Each competing use must be considered on its own merits before final decisions are made in favour of a particular use."

In appearance if not in fact, the composition of the Steering Committee for resource management planning suggested a bias in favour of the forest industry to the exclusion of all other users. We suggested to the Deputy Minister of Forests that, to ensure adherence to the principles put forward in section 4(c), Steering Committees be replaced by planning committees reflecting diverse public interests and including representation from the Ministries of Environment and Tourism and any other Ministries with a responsibility for resource use planning for the public benefit. We further suggested that consideration be given to creating a structure of subcommittees, either appointed or elected, with representatives from both the forest industry and other users, to provide advice and information to the planning committee.

The Deputy Minister replied that the Ministry would pursue plans to replace the Steering Committees with more broadly based planning committees. At the time of the writing of this report, we were advised by the Ministry that initiatives had been undertaken, but were not yet finalized, in consultation with other Ministries, to implement our recommendation as part of a major restructuring of integrated resource planning procedures.

Ministry of Government Management Services

Resolved	7
Not resolved	-
Abandoned, withdrawn, nonjurisdictional	-
Not substantiated	2
Declined, discontinued	7
Inquiries	2
Total number of cases closed	18
Number of cases open December 31, 1989	5

Three-month wait for pension contribution refund

An individual terminated his employment and applied for a refund of his pension contributions in November 1988. Three months later, at the end of February 1989, he was still waiting for his refund, and by now he urgently needed his money.

We phoned the Superannuation Commission to inquire about the delay. The Commission assured us that this complainant's cheque would be issued and mailed within two days, and that it would attempt to avoid similar delays in the future. (CS89-57)

Retirement benefits, disability benefits mutually exclusive

A young man approached us with an uncommon problem. A municipal employee, he was receiving benefits from his employer's long-term disability plan, having been informed that he was terminally ill.

During his employment, he had made contributions to the municipal pension plan. Knowing that he would not live long enough to collect a retirement pension, he wanted to withdraw his pension contributions so he could use them in a manner he considered best. The Catch-22 he encountered was the rule that contributions could not be withdrawn until the employment relationship was severed, which, once done, would disentitle him to further long-term disability benefits.

As much as we would have liked to be of help, we were unable to provide it. The information the complainant had received was correct. According to the Pension (Municipal) Act, refunds of superannuation contributions are only possible if an individual is no longer an employee. The statute does not allow for any exceptions. (CS89-58)

Widow's pension delayed

A woman whose husband had recently died counted on her widow's pension to form part of her income. She was very disappointed when, three months after the death, she had not yet begun to receive the pension.

When we called the Superannuation Commission, we were told that the money had just been transferred to the complainant's bank account on the very same day. The delay had occurred as a result of a problem that had just been remedied through a systems improvement. This sort of delay should not occur in the future. (CS89-59)

Ministry of Health

Resolved	144
Not resolved	1
Abandoned, withdrawn, nonjurisdictional	34
Not substantiated	71
Declined, discontinued	87
Inquiries	31
Total number of cases closed	368
Number of cases open December 31, 1989	115

Health care issues continue to be an interesting and important part of our work. Although the number of complaints is large, the volume is understandable in view of the fact that health care is of concern to every citizen of our province, the impact is highly personal and significant, and our population seems increasingly sophisticated in its knowledge of questions regarding medical ethics, treatment options, and so on.

Many of the concerns brought to our attention are outside our mandate. Complaints about the competence of individual medical practitioners, the lack of some services in remote communities, the functioning of elected hospital boards and the lack of funding for "alternative" therapies are not matters we can investigate. We have, however, extended our role somewhat in responding to complaints about hospitals. A small percentage of the province's hospitals are within our jurisdiction because they are run by boards appointed by government. Those with locally elected boards are not, and in the past we have simply told people we cannot assist them with their complaints except by referring them to the Hospital Programs Division of the Ministry.

This year we began calling some non-jurisdictional hospitals to informally discuss the complainant's problem. Our experience has been that hospitals have welcomed our involvement and have demonstrated their concern to respond to problems, both real and perceived. The Ministry's Hospital Programs Division has also been of great help in these situations, requesting the hospitals' review and response to issues raised by complainants.

The At-Home Program

In the past few years we have been asked to investigate several complaints involving services to children with severe health problems. Sometimes the child has been in hospital, but stabilized and able to be discharged if the required nursing support is available. In such cases parents can be trained, for instance, to care for a ventilation-dependent child, but they cannot give one-on-one awake care 24 hours a day year after year. Nursing — or other trained care-giver respite — is needed, and can be costly. In other cases parents who have managed somehow to care for a child with profound health problems have contacted us concerned that there is no respite available or that the only way the child can receive appropriate care out of hospital is if they allow the Superintendent of Family and Child Service to become the guardian of the child.

No agency had a program to serve all the needs of these families; no agency was "responsible" for the service, with its heavy fiscal allotment. On a case by case basis both the Ministry of Health and the Ministry of Social Services and Housing would respond; in fact, there was a tacit agreement to assume responsibility for one child each, in turn, but this process was confusing and frustrating for the families.

In 1989 the Ministries announced the "At Home" program, delivered within the Ministry of Health but with services from both Ministries. Under the new program, families with children who are totally dependent (they cannot eat, dress, toilet or wash unaided) qualify for a range of assistance, including respite care. Applications are reviewed by an appointed board, the membership of which includes parents of profoundly handicapped children. Children whose needs are less severe and who are not eligible for service in this program may still receive respite to enable the parents to have a break.

Although the number of people needing this kind of service is small, their needs are great, as is the cost to the "system" if family care breaks down and the children must be hospitalized. Additionally, the best health institu-

tions cannot provide the same environment for the "whole" child as can its home. This program should fill those needs and provide some certainty for the future of these children.

Institutions

Visits continued throughout 1989 to Riverview Hospital, the Forensic Psychiatric Institute and the Maples Adolescent Treatment Centre. We continued to act as a resource for these institutions as they sought information on the fairness of proposed policies and practices.

Following discussion with the centre director, the Patients Concerns Committee was revitalized at the Forensic Psychiatric Institute early in 1989. The complaint resolution process at the centre now follows this pattern:

1. The patient discusses the problem with ward staff.
2. If a patient is still dissatisfied, he/she contacts the Patients Concerns Committee.
3. If the issue remains unresolved, our office becomes involved.

The Maples also set up a Patients Complaints Committee as an internal review process. The senior nursing person chairs the committee, which focuses on patient care, quality assurance and the fair implementation of centre policies and procedures.

In our 1987 Annual Report, we reviewed the downsizing process of Glendale Lodge and Woodlands, the two remaining institutions in the province that provide care for developmentally handicapped persons. The downsizing, originally announced by the government in 1981, envisioned a ten-year process so that by 1991 both Glendale and Woodlands would be closed and the residents all moved into community group home placements. The projected completion of this process has now been extended to approximately 1994.

The Social Services and Health Ministries have set up monitoring teams to periodically review community placements and services according to criteria set by Ministry policies. We intend to continue to encourage both Ministries to strengthen the effectiveness of their monitoring systems to ensure that mentally handicapped people who are placed in group homes are guaranteed the same level of security and comfort afforded to any other person. It is essential that adequate care plans and day programs exist for each resident and that processes be readily available to address concerns raised by any person about the quality of care in group homes.

In addition to our practice of maintaining a presence at both Glendale and Woodlands, Ombudsman officers have visited several community group homes and day programs over the past year to get a first-hand look at the process.

Septic System Permit Process Study

Typifying the ready co-operation the Ministry provides to our office was its participation with the Ministries of Environment and Municipal Affairs, Recreation and Culture in the province-wide septic system permit process study that became Public Report No. 18, released in July 1989. The value of that study may be assessed by the implementation of many of the 17 recommendations made. An update to Public Report No. 18 is provided in the introduction to this report.

No coverage for injured inmate

A prisoner being transported between jails in two different provinces under RCMP escort was injured when the plane crashed. Later, when he was being held in a B.C. jail, he received a bill from the hospital that had treated him. He called us with a plea for assistance.

The reason for the prisoner's dilemma soon became apparent. Most provinces provide free medical coverage for inmates, but in this case the inmate's coverage was effective only when he was in jail, and not when he was en route between institutions. His dilemma was expeditiously resolved after we contacted an official from the B.C. Medical Services Plan, who in turn contacted the RCMP, who volunteered to pay the prisoner's hospital bill. (CS89-60)

End to free prescriptions a nasty surprise

The son of an elderly woman was puzzled when a pharmacist told his mother she had to pay for a prescription that had been free for the past six years. As her Medical Services Plan (MSP) premium was paid up, he failed to understand why the benefit was being withdrawn.

MSP premiums do not provide for free medication. The only government plan providing free drugs is coverage extended through the Ministry of Social Services and Housing, so we began by phoning that Ministry's local office. We learned from them that the woman had once been on Social Services and Housing coverage, but that had ended years ago, and she was now paying her own regular MSP. They were nevertheless intrigued, as ours was the second call that day saying that free drugs had been cut off, when the Ministry was not involved, so they phoned the drugstore and learned that the pharmacy was mistakenly giving free supplies to people for whom it could not bill the Ministry.

In the woman's case the outcome was positive, as we discovered she was eligible for Ministry of Social Services and Housing services, and that that Ministry would pay for her medication in future. The question remaining was what the drugstore would do on realizing the magnitude of its mistake and consequent loss. (CS89-61)

Placing responsibility where it lies

Since health care is "free" to those who are covered by the Medical Services Plan, few people consider claiming or suing for health care services against someone who has caused them injury. However, if someone is bitten by a neighbour's dog or is hit by a car, for example, the responsible person and their insurer — not MSP — ought to bear the costs of necessary medical treatment.

Mindful of this fact, the Ministry of Health has developed a system to alert it to cases where a third party (usually an insurer) may be responsible for services paid for by the Ministry. Hospitals treating a person who appears to be an accident victim must send in a form giving details of the treatment. The Ministry then writes to the patient for details and claims against the insurer where appropriate. The general practice is to wait until the patient settles out of court or the insurer admits liability and then to claim for the Ministry's out-of-pocket costs. However, in the case of ICBC, the province's major insurer, there are fast-track protocols for all elements of health care services from ambulance fees to surgery costs.

We were contacted by a man who said this was underhanded, as the Ministry's protocols prevented him having his day in court. He wanted the government to bring in subrogation legislation that would allow the Ministry either to sue on behalf of an injured person or to collect its costs as a result of a successful suit by the injured person. We advised the man that the decision whether or not to pass specific legislation rests with the government of the day, and that in the absence of legislation the courts have refused to consider such damage claims. We also suggested to him that B.C. does not do badly: its figures for dollar recovery per capita through protocol arrangements are very close to the figures in provinces which do authorize subrogation. (CS89-62)

Ambulance billing for hospital transfers

A caller thought it unfair that his elderly mother had been billed for ambulance costs incurred when his father, since deceased, had been transferred to one hospital from another one that lacked the equipment needed to treat him. The caller argued that as the transfer was a matter of medical necessity, it ought to have been covered under the Medical Services Plan.

Staff at the Emergency Health Services Commission told us that the relevant policy, which states that patients are to be charged for transfer between hospitals unless they are transferred back within 24 hours, was under active review. We suggested that the caller write to the Commission outlining his concerns. The Commission's director of operations responded to the complainant's letter by indicating that his concerns would be reviewed by the executive committee.

While there has been no policy change to

date, the complainant was satisfied that his concerns, which he said were raised as a matter of principle rather than to recover the payment, were being seriously reviewed at senior levels. (CS89-63)

No coverage for addiction treatment

A patient complained to us that he was expected to pay for his treatment in a substance abuse program on being discharged from the Forensic Psychiatric Institute. We encouraged the patient to discuss the issue with his treatment team. As a result, the patient agreed to pay one-third of the fee, as a commitment to the program, and the institution agreed to pay the remainder. (CS89-64)

Privacy vs. safety

Female residents at an adolescent treatment centre were concerned about a lack of privacy in the girls' bathrooms in their unit. They said staff had inadvertently entered bathrooms when they were in use.

In a solution designed to recognize the need for privacy while ensuring the safety of the residents, the centre installed new door fasteners that provided protection against accidental intrusion but could be opened from the outside in an emergency. (CS89-65)

Forceful restraint called excessive

While not claiming to have been injured, a resident complained a staff member had been unnecessarily rough while restraining her when she had become upset and had tried to leave the treatment centre.

A thorough internal investigation, which involved interviews with staff and residents, failed to establish that excessive force had been used. What was revealed by the investigation was the need to "debrief" as soon as possible after any resident has been physically restrained. In the heat of the moment, perceptions can be distorted and resentments fostered; a prompt and open discussion among all those involved can diffuse and deal with those feelings.

The result was an arrangement that future staff training sessions would provide instructions on the holding of debriefings after any episode involving physical restraint. (CS89-66)

Request for legible statute gets fast action

A staff member at Riverview Hospital stated, during one of our office's regular visits, that many patients found it difficult to read the small print of the Mental Health Act because of their age or the effects of medication. The employee suggested that, in the interest of general fairness, a large-print copy be provided. This office approached the administration, and the president promptly arranged to have such copies supplied to all areas of the hospital. (CS89-67)

Cheap by any standards

A man called us after being billed $5 for a visit to a physiotherapist. He had read the news coverage about extra billing by doctors in Ontario, and wanted to know why physiotherapists could bill if doctors couldn't.

We explained that medical services are provided on a cost-sharing agreement between the provinces and the federal government. If a province wishes to obtain the federal funds guaranteed by the agreement, then those care services covered by the agreement must be available at no direct cost to the recipient. Services such as hospitalization, doctors' fees and surgeons' fees are cost-shared under an agreement under the Canada Health Act. Provinces are free to add on services available under provincial medical schemes, which are not cost-shared with the federal government, and these added services are not subject to federal rules.

B.C. has chosen to add on services such as those provided by chiropractors, massage therapists and physiotherists. For these services there is a user fee of $5 and a limit on the number of "covered" visits in any calendar year. While it may appear that the public is being charged — as it did to the complainant — in fact the public benefits by the provision of subsidized services for which the province could choose to provide no coverage at all. (CS89-68)

Patient-staff relationships in institutions

The mother of a resident of a mental health facility called to express two concerns. The first was that staff members in the facility were involved in inappropriate relationships with her daughter. The second was that the mental health facility would not transfer her daughter to a different hospital.

On being contacted by our office, the Unit director initiated an investigation into the allegations of inappropriate staff conduct. As a result of this investigation the staff members involved were disciplined and a policy memo reminding staff of reporting procedures for allegations or suspicions of abuse, neglect and improper conduct by staff was circulated. The Ministry also agreed to implement procedures to this effect through its clinical policies and procedures manual.

The second complaint, which was lodged some time after the first issue was resolved, was discontinued when the complainant's daughter was discharged from hospital.

The response of the clinical director to our concerns about the allegations of inappropriate conduct by staff achieved a satisfactory resolution of the problem. The potential effects of actions of staff on patients reinforce the importance of closely monitoring the care of vulnerable persons receive while in an institutional setting. (CS89-69)

Revised subsidy calculation complicated but fair

Recent amendments to the federal income tax structure caused change in some provincial services that provide varying degrees of financial assistance based on incomes of recipients. For example, Medical Services Plan premiums are subsidized for low earners. In previous years MSP used the amount of "taxable income" indicated on the income tax form to calculate eligibility for subsidy. All that MSP had to do was set an income level for each family size and then grant assistance to all those whose taxable income fell below the "line".

As result of the changes in the tax system, the previous concept of taxable income disappeared. Instead, taxpayers now claim tax credits from a gross amount reduced by items such as RRSP payments. The necessary alteration to the MSP system caused such confusion that the Plan's phone lines were clogged for days. It also resulted in a complaint to our office from someone who thought MSP was discriminating against single people. Under the new system, gross household income is reduced by $3,000 for each spouse and dependant to arrive at a net figure. A subsidy is granted to every household whose income falls below a set amount, which is the same irrespective of family size.

While we agreed with the complainant that the new scheme was confusing, we were satisfied it was fair. Although there is no deduction for the head of a household, regardless of family size, the system ensures that when more people are having to live on the same amount of money, a greater subsidy is given. We were satisfied that the new system provides a subsidy to everyone who was previously eligible and has widened the range of eligible persons. (CS89-70)

Appearances notwithstanding, we're just friends

The nature of one's relationship with a roommate of the opposite sex is not usually government's business. As Pierre Elliott Trudeau succinctly put it, the state has no place in the bedrooms of the nation. Be that as it may, questions are asked if one or both members of a "couple" are applying for subsidized or means-tested benefits. In the case of the Medical Services Plan, full premiums are the same for two separate adults as for a family. Since premium assistance (PA) — the subsidized benefit — is based on income, it becomes crucial to decide whose income should be counted when application is made for such assistance.

A man was refused PA although he had lost his job and had minimal UIC. Ordinarily, such circumstances would guarantee his eligibility. The hitch was that MSP considered him part of the "family" of his female roommate. He and she had been living common-law, and he had been on her employment-related medical coverage. However, he told us, the relationship had ended, she had removed him from her

medical coverage, and she was now engaged to someone else. Remaining on amicable terms, they considered it practical to continue to live in the same apartment to share and to reduce expenses. The complainant said MSP refused to believe the relationship was over and unreasonably insisted that sharing costs, like sharing income, showed dependency.

Our concern was not with the truth of the man's situation but with the question of policy. It seemed to us that sharing costs was a very different matter than sharing income. It also seemed that MSP should have at least given the man some advice on the kind of third-party information that might be accepted as proof of his status. For instance, would MSP accept statements from the woman and her fiance? Did it count that another means-tested government program (income assistance) had already reviewed the situation and accepted the man as "single"?

MSP officials agreed that our concerns were reasonable and granted the complainant subsidized medical coverage. In addition, they assured us that new guidelines would be written on how to determine what constitutes a "family" and how to review disputed cases. (CS89-71)

Responsibilities of "kilo car" ambulance drivers

Small-town ambulance crews are often part-timers or on- call workers. Frequently one crew is "on duty", paid for the shift and standing by ready to go. The second crew is a "kilo car" and does not get paid unless it responds to a call because the first crew is already busy. Kilo car duty means being at or in the ambulance and within the "response time" area of your territory waiting to be paged. Because there may be no pay whatsoever, these crews are permitted to carry out personal business, provided the ambulance stays within its response time territory.

We received a call from a man who said his tax dollars were being abused by an ambulance driver who used the ambulance to pick up and deliver car parts. The truth was somewhat different - a kilo driver had brought his partner over to see a car under repair. We can understand why the public would not expect to see an ambulance on this kind of business. The Emergency Health Services Commission agreed to call our complainant to discuss the matter and explain its policy. (CS89-72)

Persistence pays off, community placement secured

Staff at the Forensic Psychiatric Institute complained on behalf of a developmentally disabled patient that she should not be kept in the Institute. They had written to the Ministry of Social Services and Housing to recommend that a placement for the patient be found in the community, but no such placement had resulted.

After we raised the staff members' concerns with Ministry of Social Services and Housing officials, that Ministry's area office applied for funds and hired a contractor to provide a residential resource for the patient, and the patient returned to the community. (CS89-73)

Overcrowding at the assessment unit

A staff person at the Juvenile Services Centre expressed concern about overcrowding at the court's inpatient assessment unit. As the unit was temporarily housing more youths than the official bed count, the Centre hired additional staff to ensure provision of adequate supervision of residents. In addition, the Centre proposed that, for the longer term, plans be made for relocation of the residents to a larger facility in the new youth detention centre complex. (CS89-74)

The trauma of strip searches

During one of our office's regular visits, a resident of the Maples Adolescent Treatment Centre described her fear and confusion when she was strip-searched by a female employee after an unauthorized absence. Her anxiety may have stemmed in part from the fact that, as a child, she had been sexually abused in her community.

Staff considered the search necessary because the complainant had returned from a previous absence with potentially dangerous contraband. We discussed with officials at the Centre the importance of giving reasons for

such searches, of conducting them with a high degree of sensitivity, and of providing adequate opportunity for debriefing with the resident after such a search. (CS89-75)

Paying for medical opinions on fitness to drive

We receive many calls from people who feel harassed when the Motor Vehicle Department requires them to requalify to retain their driver's licences. This can happen because of advancing age or debilitating disease, and may require a medical opinion rather than simply taking a driving test. It is salt in the wound to some people to discover that they must not only prove they can still function but also pay for the process when they visit their doctor.

The Medical Services Plan does not cover doctors' services that are not related to the diagnosis, treatment or prevention of illness. This is consistent with the philosophy that provides for public sharing of the cost of necessary medical treatment that might otherwise be unaffordable to members of society. Opinions that one is "fit", be it to drive, work or be insured, do not meet these criteria and so must be paid for by the patient. (CS89-75)

Many ways of paying MSP premiums

Many people do not purchase their medical coverage individually, but receive it through a group plan. The employer, union, etc., handles the paperwork, and the Medical Services Plan has no dealings with the actual subscriber. Sometimes contributions are deducted from the paycheque or are paid by the employer as a "taxable benefit" to the employee; in other instances a union runs an "hour bank", under which earnings are remitted to the union, which then organizes the whole benefits package from medical to group life. Deductions may be made in the month to which coverage relates, but more often the deduction is for the next month's benefits.

Such a variety of schemes may be confusing to an employee who doesn't know whether to deal with payroll or MSP, or who gets conflicting information. A couple who experienced such confusion contacted us. The woman had medical coverage at work, for which she paid half the cost; the deductions applied to the following month, and she paid tax on the half of the cost borne by the employer. The man was a tradesman whose union ran an hour bank; as his work was seasonal, he was not always certain whether he had built up enough hours to cover the benefits during a period of layoff. MSP noticed that the family had duplicate benefits and wrote a letter requesting cancellation of the wife's plan — it chose that option because it knew the husband's union would not allow his plan to be cancelled without cancelling all the other benefits in the "package", such as dental coverage.

The husband could not get confirmation that he was and would stay covered, so the couple chose to continue the wife's plan. Months later it became clear they had both been provided with coverage for the whole family, so they decided to cancel one plan. Each talked to payroll, each called MSP, and the information they received seemed conflicting and nonsensical, so they called us to complain that MSP would not refund the money paid for unnecessary duplicate coverage.

The reality was that MSP would provide refund either to the union or to the employer, according to the couple's choice. They would not provide a refund to the couple directly, as the couple had not remitted the premiums in the first place. The logic for this was that the transaction must go through the originating payroll process, as the refund might be due, at least in part, to the employer and might have tax ramifications. In this case the husband's union was known to refuse to allow the option of cancelling part of the benefit package, so we advised the couple that if they wanted a refund, the best chance was to approach the wife's employer. (CS89-77)

Charged for an empty bed

A woman complained that her father, who had been moved from an intermediate-care facility to another residence, had continued to be charged a daily rate by the vacated facility until his bed space had been filled.

We brought the complaint to the attention of the Ministry, which said the practice was contrary to their policy and arranged for the

facility to refund the amount in question. In addition, the Ministry initiated a survey as a means of checking that the practice complained of was not in widespread use by other service providers. (CS89-78)

Charged for incontinence supplies

A woman complained that a friend who resided in a long-term care facility had to purchase his own incontinence supplies. She said she understood that other facilities bore such costs without residents being charged for them.

Ministry staff told us they were already aware of the problem and had instructed all long-term care facility operators not to charge residents for extra medical costs, including incontinent supplies and diet substitutes. In addition, a letter regarding user fee increases had been sent to all residents and included the information that incontinence supplies were not chargeable items. The facility against which the complaint was lodged acted quickly to comply with Ministry policy and set matters straight. (CS89-79)

Child waits 42 hours for surgery

A mother called us, feeling unsuccessful in her attempts to resolve a dispute with the hospital at which her seven-year-old had been treated. The child had fallen at school, breaking a leg, and was taken to hospital by ambulance. This hospital was not the closest to the school, but was the tertiary trauma centre for the area — i.e., the hospital supposedly best able to respond to emergencies.

The child had waited 42 hours for surgery on the leg. On several occasions during this period, an operating time was scheduled and then postponed, so throughout the 42 hours the child was restricted from drinking and eating. Her legs were bound in place to prevent further damage, and the mother said that despite sedation the child had been in pain and afraid.

This was an unacceptable wait to the mother. The hospital had told her that it had a protocol classifying maximum response time for surgery, by type of injury, but she thought that children were a special case and should be a priority, considering a child's inability to understand such situations. It incensed her to learn that the hospital had had a vacant operating room and staff available but would only open that operating room for "true" emergencies.

This was a very complex problem to review, not least because of the number of interests and decision-makers involved. A child in pain will always come first to the parent, but the doctors and hospital administration must consider other interests. The protocol for assessing priority is obviously a reasonable idea, to establish certainty: even though the protocol exists, any doctor can argue that an individual patient is "different" for some medical reason and needs to jump the list of usual priorities. As well, the protocol simply assigns maximum response times: in many cases the actual response time is much sooner. In this child's case a series of acute emergencies, such as road accident victims, were admitted, thus delaying the child's surgery. The doctor could not say she was a special case: he agreed that her treatment and recovery were not affected by the wait, and felt she was sufficiently sedated to experience no pain.

The problem was created by competing values and interests. The hospital felt it must keep its emergency capacity for another operating room for true "emergencies" and believed it would be derelict to use this capacity and then be unable to respond to a head injury or caesarean section problem. The doctor felt he had been able to do the proper job, but that "good" medicine would not leave a child and parents with this stress and uncertainty. The parents felt that their child and they had suffered unnecessarily, perhaps because of some organizational needs, perhaps because of underfunding.

We are not medical experts and did not examine the actual treatment of this child. Nor can we determine what our social policies should be on the extent to which "consumer" values drive the health care system. What we could and did do was examine the hospital's policy-setting framework to see if its policy was based on appropriate expert opinion and left room for case-specific response. As that was the case, from our perspective this family was treated reasonably, if unfortunately. (CS89-80)

Behavioural problems complicate care

The mother of a young man who had received a serious head injury in an automobile accident told us she was concerned about the care he was receiving. The man had been placed in a private community resource for care and assessment, but the placement had broken down as staff could not control his behaviour. The woman said a more suitable resource was needed to provide the required level of control. Her son had been incarcerated in the community on several occasions for what might be described as nuisance types of offences. It appeared that the community's response was to put him in jail to remove him from the street. Unfortunately, while incarcerated, he spent most of his time in the segregation unit to protect him from abuse and injury by fellow inmates.

We conducted a joint investigation involving the Ministry of Health and correctional authorities. The investigation focused on case planning involving the probation staff, mental health professionals, and the private psychiatrist. We provided the professionals involved with information about the organic brain syndrome program at Riverview Hospital. The referral process was completed, and he was approved for admission to the program. We anticipate that this resource will provide the treatment and structure that the young man requires.

It is important to note that we do not ask resources to alter their eligibility lists to accommodate a particular individual; nor do we request that admission criteria be altered if they are fairly constituted. However, we do see it as our mandate to ensure that the professionals involved are communicating effectively and that all available information is considered in the planning process. (CS89-81)

No MSP coverage for visits to psychologist

A woman who had recently returned from a holiday in the Caribbean told us that during the vacation she and her husband had been robbed at gunpoint and the assailants had brutally assaulted her. As the offence had occurred outside B.C., she was not eligible for compensation under the Criminal Injury Compensation Act.

The woman said that after the couple's return to B.C., she had contacted Mental Health Services to get counselling to help her overcome the ordeal, but had been told there would be a waiting period to see a mental health counsellor.

As she felt in urgent need of assistance, she asked about other alternatives. She was advised that the Medical Services Plan would pay for counselling if she saw a psychiatrist. The psychiatrist she spoke to could only offer types of therapeutic treatment which she considered unacceptable, so she arranged private counselling. She contacted us when she learned that neither the Medical Services Plan nor Mental Health would reimburse the private psychologist for his services.

In conducting our investigation, we looked for information which might have stated or implied a commitment on the part of government to pay for the services provided by the psychologist. We also assessed the availability of alternative services.

Although everyone appeared sympathetic to the complainant's situation and the tragic circumstances which precipitated the need for services, there was no indication of a commitment on the part of government to pay for the counselling sessions provided by the psychologist. Therefore we were satisfied that government had not reneged on a verbal or written commitment. Secondly, we were able to establish the availability of alternative services which could have been funded by the Ministry of Health.

Authority for the Medical Services Plan to pay for services comes from regulations made pursuant to the Medical Services Plan Act, and existing regulations do not provide for payment for the services of psychologists. Regulations made pursuant to statutes are ordered by the cabinet and are thereby considered to be an act of the legislature. We were unable to take further action to rectify the problem, as the Ombudsman Act does not provide authority to investigate actions of the legislature. (CS89-82)

Help for an ill boy's parents

Many families who have children with special needs often find themselves caught between systems. In one case, parents of a young boy with serious medical problems contacted us when they could not get officials to agree what was needed and from whom. The boy was at the time in an acute care hospital, due to breathing problems, but was ready to come home. His parents were unable to cope with the demands of their son's needs without assistance. In order to best care for their son, the parents required respite care and special equipment.

We discussed the matter with officials from both the Ministry of Health and the Ministry of Social Services and Housing. At the time of this complaint the government had not yet implemented the At-Home program; however, after some assistance from our office, agreement was reached about the Ministry's involvement, and when everything was in place the boy was able to go home. (CS89-83)

Ministry of Labour and Consumer Affairs

Resolved	46
Not resolved	-
Abandoned, withdrawn, nonjurisdictional	26
Not substantiated	55
Declined, discontinued	100
Inquiries	28
Total number of cases closed	255
Number of cases open December 31, 1989	45

Liquor Control and Licensing Branch

Public concern about Liquor Control and Licensing Branch policies and practices concerning enforcement and the issuance of licences generated the majority of investigations of complaints respecting the Ministry. The Branch's inability to explain its decisions, particularly with regard to neighbourhood pub referendums, in a convincing manner led to the lodging of many complaints.

Recent administrative changes — in particular the creation of a multi-member board for licence application evaluation — have been made to improve the Branch's efficiency and alleviate concerns about the fairness of processes used in the past. Replacement of the present referendum process with voting procedures similar to those employed in federal, provincial and municipal elections, was recommended by our office. Implementation of the major changes to discretionary decision-making and an independent appeal system recommended in the Ombudsman's 1987 Public Report No. 6, *Liquor Control and Licensing Branch Fairness in Decision Making*, would go a long way towards providing a fairer, more efficient service to the public.

Pub gets high marks for popularity, none for legality

In the early 1970s, owners of properties in a rural lakefront subdivision registered a building scheme designed to preserve their peace and quiet. In essence, only single family homes were to be allowed in the subdivision.

After a few years, one of the owners opened a convenience store and then a restaurant. No one objected until he took the further step of applying for a licence to operate a neighbourhood pub. At this point one of the other owners, who eventually complained to us, opposed the application, while providing to the Liquor Control and Licensing Branch an unresearched legal opinion that a pub would not contravene the provisions of the building scheme. The licence was granted in 1985.

By the time the complainant sought our assistance in 1989, he was armed with a researched legal opinion that the pub did indeed contravene the building scheme. He also objected to the fact that the pub owner had since built a wharf, without any apparent authority, for the convenience of his patrons.

At our suggestion, the complainant forwarded the new opinion to the Liquor Control and Licensing Branch. In the meantime, we contacted the Ministry of Crown Lands, which confirmed that the wharf had been built without a permit and ordered it dismantled. In due course, a permit was issued for the building of a new wharf at a different location where such a structure would be less intrusive to the neighbours' privacy.

Our investigation revealed that the field investigation conducted by the Branch at the time the pub application was received had neglected to consider whether or not the proposal conformed to the requirements of the building scheme. Nor had the local regional district given consideration to whether or not there were zoning restrictions affecting the construction of the pub. We agreed with the legal opinion that a contravention of the building scheme existed.

Time passed, and no response was received from the Branch with respect to the opinion provided by the complainant. Consequently we suggested that he consider seeking a court order with respect to whether or not the pub was in conformance with the building scheme. He did so by way of petition, in response to

which the B.C. Supreme Court promptly found the pub in contravention of the scheme and ordered an immediate cancellation of its licence. (CS89-84)

Liquor Distribution Branch

The mystery of the missing cider

A transaction between the Liquor Distribution Branch and an overseas purchaser for 21,000 of cases of B.C. cider went sour when the buyer, unable to arrange financing, reneged. Liquor regulations stipulated that the cider could only be sold outside Canada, so the Branch put the cider in a warehouse until a new purchaser could be found. When no purchasers appeared on the horizon, and as storage costs began to escalate, the Branch sold the cider to a private distributor, on condition that the cider be exported and be available for unannounced inspection until exported.

An initial inspection found everything to be in order. Later, however, it came to the attention of the Branch that cases of cider identical to those sold to the distributor were mysteriously appearing in outlets on the Lower Mainland. The inspectors again visited the warehouse, and this time found only 6,000 cases, which were promptly seized.

The complainant, on being summoned to a "show cause" hearing to provide him with the opportunity to comment on the whereabouts of the 15,000 missing cases, assured the Branch that he had documentation proving the cider had been exported. The only problem was that he wasn't quite sure where the documentation could be found. Branch officials treated his tale with a certain skeptism, and he complained to us about the seizure of the 6,000 cases.

Our request for production of the alleged exportation documentation was as fruitless as the Branch's had been. We reached the opinion that, given the absence of anything to contradict the conclusions suggested by ample circumstantial evidence, the seizure had been proper. (CS89-85)

Disabled, not drunk, customer refused service

Persons with certain types of epilepsy, speech impediments, and other uncontrollable physical disabilities may experience humiliating treatment in their day-to-day dealings in stores, government offices and other premises where they conduct the day-to-day business that the average citizen carries on with no difficulty whatsoever. Those in the position of dealing with the public as part of their everyday jobs may easily make mistaken assumptions about such people's intelligence or character, and it is most important that public servants "on the front lines" attempt to increase their awareness of the characteristics of such disabilities and display sensitivity when dealing with citizens so affected.

A man complained that he had been refused service in a liquor store because of a speech impediment and a limp. This being his second complaint to us on the same set of facts (the first one had resulted in an apology), he wanted the issue settled once and for all.

The complainant's unclean appearance did not assist his cause, but added to the general impression of one inebriated. While he was known to some store clerks, staff turnover meant that others were unaware of his disabilities and understandably were inclined to adhere to the policy of refusing to serve a customer who appears drunk.

The store manager had been in the practice of coming to the complainant's assistance once he became aware of his presence in the store. After the second complaint to our office, the manager came up with an arrangement whereby in future the complainant would take his purchases to the customer service area rather than to the checkout line, thereby avoiding any frustration or humiliation for himself and precluding embarrassment to clerks who were merely attempting to perform their duties properly.

In 1990 our office, in co-operation with a number of concerned Ministries and advocacy organizations, will be producing a videotape to help public servants provide services to people with physical or mental disabilities. (CS89-86)

Two Hobson's choices, one Catch 22

A man who tried to purchase a bankrupt general store which was licensed as a liquor outlet ran into a Catch 22 when he went to obtain a mortgage. His bank, recognizing that the sale of liquor would likely be a major source of revenue, told him it would withhold financing until he obtained renewal of the licence. The Liquor Distribution Branch advised him that it would be glad to consider his application for renewal once his financing had been approved. He came to us for advice.

The policy of the Branch is to license the individual rather than the premises. When a property is sold, a period of transition is allowed to ensure that service to the public is maintained, but confirmation that the new owner will become the licensee must await a review of the suitability of other premises that may file licence applications. As a policy whose purpose is to perpetuate and improve, when desirable, the overall services offered, it is well founded.

Following a call from our office, the Branch immediately sent an explanation of its policy to the financial institution, which thereupon looked favourably upon the applicant's financing requirements. (CS89-87)

Employment Standards Branch

During 1989 our office was involved in a number of discussions with the Employment Standards Branch staff regarding the fairness of the Branch's hearing and review process. We suggested a number of improvements to the system and understand that changes to the process are scheduled for 1990.

Lost: two indebted employers

Complaints about the Employment Standards Branch frequently have to do with delays in the settlement of claims for outstanding wages. As a general rule, the delays complained of have reasonable causes.

Two former employees of a contracting firm made such a complaint. On contacting the Branch, we learned that the complainants had each made two different claims against two different employers, each of which had gone missing. The Branch had eventually located one, and assured the complainants that it would continue to attempt to locate the other in an effort to settle the claims. (CS89-88)

Delayed reinstatement galls fired worker

When an industrial relations officer (IRO) at the Employment Standards Branch ordered an employer to reinstate a dismissed worker, the employer appealed the decision, unsuccessfully, to the Branch director. The complaint we received from the employee was that he had not been rehired as soon as the reinstatement had been ordered by the IRO.

We explained to the complainant that the Employment Standards Act makes no provision regarding reinstatement while an appeal is underway. Once the decision of the branch director finalized the matter, the employee had been reinstated with full retroactive pay to the date of the industrial relations officer's order. This seemed to us a fair arrangement, and consequently we did not find the complaint to be substantiated. (CS89-89)

Babysitter demands back wages

A babysitter complained to the Employment Standards Branch that she had not been paid according to the agreement made by the woman who had hired her. The result was an order by an industrial relations officer for payment of wages. Such orders are conveyed to employers by mail or personally served.

The employer told us she heard nothing about the order until a sheriff turned up at her door with a writ to seize sufficient assets to pay the debt. However, we were informed by the Branch that all the customary preliminary steps preceding the writ of seizure — including mailing of the order — had been taken, with no response received.

The matter was resolved when the employer quickly agreed to a compromise under the terms of which the Branch would withdraw the writ of seizure on condition that the employer deposit in trust the amount owed to the

babysitter until the employer's appeal was heard. (CS89-90)

Residential Tenancy Branch

The Residential Tenancy Branch is responsible for the administration of the Residential Tenancy Act. The Act provides that most landlord and tenant disputes are to be resolved through arbitrations administered by the Branch. The Branch also has a staff of inquiry officers who provide information to people inquiring about their rights.

During 1989 there were a number of major changes at the Branch. Some of these were structural. There has been some decentralization, with new management positions being created outside the Vancouver region. As well, arbitrators have been appointed to hold hearings in other regions, including Vancouver Island, the Fraser Valley, and the Okanagan. The Branch is currently seeking additional arbitrators in the north. Previously, almost all disputes arising outside of Vancouver or Victoria had to be heard over the telephone, so the appointment of arbitrators for the regions will undoubtedly provide improved service for people in these areas.

Perhaps the most significant change at the Branch during 1989 was its added jurisdiction over monetary matters. Prior to legislative amendments which took effect in August of 1989, the Branch dealt only with non-monetary issues. Any claim for damages, no matter how small, had to be advanced through the courts. The change provides landlords and tenants with "one stop shopping". Some hotel tenancies also came under the jurisdiction of the Branch for the first time - the result of an effort to provide some protection to people who are not merely guests of hotels but in fact live there on a permanent but tenuous basis. As a result of these legislative changes, the Branch has experienced a considerable increase in the number of applications it receives, and new arbitrators have been hired to meet the demand.

This office receives complaints about decisions of the arbitrators and, to a lesser extent, about the advice given by inquiry officers. In general, the decision of an arbitrator can only be overturned by the courts through an appeal process called "judicial review". Unfortunately, this is a highly technical form of appeal which most people are not able to handle without legal advice.

Except in rare cases where an arbitrator has made a fundamental legal error, any investigation we may conduct will not alter the legal effect of the arbitrator's decision. When we receive a complaint about an arbitrator's decision, we will review the arbitration file and discuss the decision with the arbitrator. In some cases, we may make a recommendation about the fairness of the procedures used in reaching the decision, or about the fairness of the decision, but this will not have the effect of overturning it. It may, however, lead to fuller reasons being given for the decision and affect the way future arbitrations are conducted. The arbitrators have to strike a difficult balance between the need to ensure that high standards of procedural fairness are maintained and the need to provide fast and efficient service.

Rescheduled hearing suits lawyer, impossible for landlord

A landlord said that when he appeared at the time set for his hearing, the arbitrator told him she had received a telephone call from the other party's lawyer to say that he was unable to appear that day and to request an adjournment. The arbitrator granted the adjournment, but the landlord was not able to appear at the new time. He complained that the only alternative he was given was to present his evidence separately. This meant that he would lose the right to hear the tenant's evidence and to cross-examine the tenant.

Although we felt it was reasonable to grant an adjournment, it was not fair to place the complainant in a position where he would lose the opportunity to hear the other side. The arbitrator had hoped that the arrangement would be expedient for the parties, but when we advised the Branch of the complainant's concerns, a hearing before a new arbitrator was arranged. (CS89-91)

Landlord claims financial hardship

An arbitrator ordered a landlord to complete extensive repairs within six months, failing which the tenant's rent would be redirected to the Branch in order that the repairs could be made. The landlord did not complete the repairs, and the rent was redirected. The landlord then attempted to terminate the tenancy, but the arbitrator held that he had no legal grounds to do so. The landlord complained to our office that the decisions of the arbitrator were unfair because they failed to take into account the financial hardship he suffered as a result of the repair orders and redirection of rent.

We determined that the arbitrator had made every possible attempt to accommodate the complainant's circumstances, but when the landlord failed to complete the repairs, there was no alternative but to order the rent to be redirected. (CS89- 92)

Buried in the wrong plot

When a woman died, her family arranged to have her buried in a city-administered cemetery. They asked that the remains be interred in a plot as close as possible to the grave of a relative by the name of Archie Smith [fictionalized for the purpose of this report]. What no one realized was that there were two Archie Smiths in the cemetery, and, as fate would have it, the woman was buried near the wrong one.

The circumstances took a turn for the worse when a man discovered that the woman had been buried next to his wife's grave in his own plot. Furious, he engaged legal counsel to have the remains removed.

There are occasions when being treated with tact and compassion are more important to a complainant than any resolution we might achieve. Such was the case when the daughter of the deceased, having received a demand from the lawyer that her mother's body be removed within four days, called us in great distress to see if there was anything we could do.

Although the city prided itself on having a relatively flawless system in the administration of the cemetery, clearly an error had been made in this instance, and it was equally clear that there was only one reasonable solution, albeit a painful one for the caller to contemplate - the remains would have to be exhumed and relocated at the city's expense under the provisions of the Cemetery Act. The city had already offered to do this, and we merely acted as an intermediary to facilitate the arrangement and ease the distress of the daughter of the deceased woman. (CS89-93)

Consultant unpaid for services rendered

The Ministry consulted a company with respect to the feasibility of a "test vehicle" program being contemplated to assist in the independent investigation of quality of services provided by auto repair stations in the province. This necessitated a number of detailed discussions with the firm, which prepared a detailed cost estimate for program implementation. For this the company rendered an invoice, which was not paid. The owner complained to us.

Upon investigation, we learned that the telephone conversations had originally been intended as part of an exploratory process to determine a general cost figure for the implementation of such a program. However, the complainant's firm was required to use its time and expertise to develop a figure which would be realistic and of some use in the Ministry planning process. The complainant contended that his company should be reimbursed for that service.

The matter was ultimately resolved after some degree of confusion was cleared away as to the authority of the Ministry personnel involved to procure such services. Upon confirmation that the services were in fact rendered by the company, its invoice was promptly paid. (CS89-94)

Software purchase delayed

The president of a computer consulting company understood the Ministry to have entered into an oral contract with him to purchase some software he had designed. Acting on that belief, he made substantial expenditures and commitments, including the hiring

of staff. When he approached our office, some time had passed and he was afraid his chances for a contract were diminishing while his corporation's financial difficulties increased.

We set up and attended a meeting between the complainant and the Ministry's representatives. During the course of the meeting, it became clear that the Ministry was still interested in the complainant's product but wished to conduct a more detailed analysis than had previously been undertaken. The complainant was able to elaborate on his concerns and persuade the ministry that, if he was expected to stand ready with his product for any length of time, he would require help. Having gained an appreciation of the difficulties facing the complainant, the Ministry agreed to pay him, as an interim measure and without prejudice, a sum to tide him over until the Ministry could reach a decision whether or not to purchase the software. (CS89-95)

Parental consent for drug and alcohol counselling

The supervisor of a drug and alcohol program for youths was concerned about precautions he should take with respect to obtaining parental consent for treatment. He sought our advice on the subject.

The program, which was set up by contract with the Alcohol and Drug Program of the Ministry of Labour and Consumer Services, was designed to reach out to youths who were identified as having drug and alcohol problems, and to provide them with counselling. Some of the youths who participated in the program were reluctant to reveal the identity of their parents, and occasionally parents would withhold consent for reasons the director suspected were not in the best interests of the child.

The supervisor was concerned that there might be a legal prohibition preventing him from counselling the youths without their parents' consent. We described to him the provisions of the Infants Act, which requires a medical practitioner to make a reasonable effort to obtain consent for medical treatment from the parent of any child under the age of 16. We brought to his attention section 16(5) of the Act, which enshrines the common law rule of the "emancipated minor", under which a youth under 16 may receive treatment without parental consent provided that he understands the nature and consequences of the treatment.

In view of the possibility of disputes arising about interpretation of the Act's provisions in individual cases, we recommended to the supervisor that he consult his program's lawyer, maintain careful documentation of efforts made to obtain parental consent, and consult with Alcohol and Drug Program officials about their understanding of his program's contractual obligations with the Ministry. He later called back to let us know that Ministry officials had met with him and had agreed to review the Ministry's policy to ensure that it dealt adequately with his concerns. (CS89-96)

Ministry of Municipal Affairs, Recreation and Culture

Resolved	11
Not resolved	-
Abandoned, withdrawn, nonjurisdictional	5
Not substantiated	15
Declined, discontinued	11
Inquiries	6
Total number of cases closed	48
Number of cases open December 31, 1989	8

As in previous years, a significant number of complaints were received about the actions of municipalities. As it did in 1987, the Union of B.C. Municipalities again passed a motion, at its 1989 annual convention, calling for proclamation of the schedule to the Ombudsman Act that relates to investigation of complaints with respect to municipal matters. This motion — identical to that passed by an annual convention of the Social Credit Party — has yet to be acted on. In the meantime, an amicable working relationship between our office and the Ministry staff allows a measure of assistance to be given to citizens who bring to us their concerns about matters under municipal administration.

The Ministry was also a helpful participant in a province-wide study undertaken by this office jointly with the Ministries of Health and Environment into the septic system permit process, detailed in our Public Report No. 18.

Home is where the heart is - except for tax purposes

A businessman who owned two houses, one in Alberta and one in B.C., found himself in a jam after buying a truck for his Alberta company. When the information got through to the Homeowner Grant Administration Branch that he'd been seen driving around with Alberta plates, he got a letter suggesting he repay amounts previously claimed as homeowner grants. He was told it had been determined that even though he spent a significant amount of time at his B.C. home, he hadn't been eligible for the grant.

In assessing an applicant's eligibility for the grant, several criteria are used to determine the location of a person's principal residence. Key among these are the province of residence shown on federal income tax forms, driver's licences and medicare cards. In the complainant's case, all the above indicators suggested he had called Alberta his home throughout the period that he received the B.C. homeowner's grant. The Branch's position seemed reasonable to us. (CS89-97)

Many lightbulbs later, leaking fixture fixed

The owners of a group of newly built strata-title units were dismayed to find they were spending up to $140 a month replacing burned out bulbs on exterior lighting fixtures. When they reported this to the Electrical Safety Branch, an electrical inspector visited the premises and found the cause of the problem: the fixtures had been installed in laminated wood which, through exposure to the weather, had cracked and allowed moisture to seep into the fixtures.

The electrical contractor who had installed the fixtures corrected the problem after it was brought to his attention by the Branch. What remained lacking, two months after the repairs had been effected, was a certificate of approval from the Branch, which the owners considered necessary for their protection should there be a fire and any subsequent difficulties in recovering insurance moneys. The Branch explained to us that the delay was a result of an unusually high demand for inspections and certificates, with priority being given to elimination of hazards and to fire and accident investigations. It then promptly issued the certificate requested by the complainants. (CS89-97)

Two votes or none?

Two votes, or none at all? This is the question that faced a couple residing in a small town in

the Queen Charlotte Islands. The complainants, a husband and wife, lived in a municipality where they wished to vote in municipal elections. Neither was a Canadian citizen, but they could cast one vote through their corporation, which, as a legal entity, paid municipal taxes.

The problem was that they also lived on the premises upon which their business was located, which itself was within the municipal boundary. They found to their surprise and resentment that section 38(4) of the Municipal Act removed the corporate vote in cases where the principals of the corporation also resided in the municipality. The complainants considered this unfair, as it was patently obvious that they, by virtue of their citizenship, had no right to vote as individuals.

Upon consideration, we declined to substantiate their complaint. Section 38 of the Municipal Act was created to prevent multiple votes being cast by an individual who might possess the right to vote both as a citizen and as an agent of a corporation controlled by that individual. Section 38 appears to be blind to instances where individuals might, by way of citizenship, be precluded from casting votes. While the situation for the complainants was unfortunate, we did not find it to be unfair. It was reasonable for the principle of "one person, one vote" to be given priority. However, if this office becomes aware of this consequence being more than an isolated though unfortunate incident, we will consider recommending that the legislation be reviewed. (CS89-99)

Town expansion plans unpopular with rural neighbours

The complainant was one of a number of concerned individuals living in unincorporated areas adjacent to the town of Gibsons on the Sunshine Coast. A proposal had been advanced for the restructuring of the boundaries of the town to include the two adjacent electoral areas, in one of which the complainant resided. Passionate arguments had erupted in these communities as to the appropriateness of restructuring, some individuals stating that the move was nothing more than a "tax grab" to broaden the municipalities' tax base or a "land grab" to benefit development interests. There was apparently a sizeable community of opinion that no significant benefits would flow to the electoral areas as a result of being absorbed within a restructured municipality of Gibsons.

The concern of the complainant had to do with the conduct of a proposed referendum, to be carried out under the authority of the Municipal Act, as administered by the Ministry of Municipal Affairs, Recreation and Culture. The proposal was simply for one referendum to be held, with no distinction as to the origin of ballots cast; the opinions of voters living in the electoral areas would not be identified separately from those of individuals casting ballots as residents of the municipality of Gibsons. The complainant felt that this procedure could unfairly work in Gibsons' favour, as the population base in the municipality might be able to overwhelm numerically those individuals residing in the electoral areas; in any event, even a slim majority vote might not give a clear indication of the desires of those individuals in the electoral areas who would find themselves living under a different system of local government.

Upon investigation, we agreed in large measure with the complainant's representations and communicated our opinion to the Ministry. We stated as an observation - the referendum had not yet been held - that it was appropriate for votes to be polled and tabulated in a manner consistent with the present structure of existing political entities. In other words, electoral areas should each be heard from individually so that the sentiment of voters in each area could be understood.

All of this subsequently proved to be academic when the Ministry announced that the referendum was cancelled and that all restructuring initiatives would be suspended for the foreseeable future. (CS89-100)

Ministry of Parks

Resolved	1
Not resolved	-
Abandoned, withdrawn, nonjurisdictional	1
Not substantiated	3
Declined, discontinued	-
Inquiries	-
Total number of cases closed	5
Number of cases open December 31, 1989	3

Ecological reserve proposal falls through

A landowner who wanted to sell his property contacted the Ministry of Parks to invite it to make an offer. Ministry officials expressed an interest, as the situation was ideal for development of a marine park, but they lacked the funds to make the purchase. The owner was not receptive to their proposal for a land trade in lieu of cash.

In an effort to conclude a deal, the Ministry contacted The Nature Trust of British Columbia, a charitable corporation dedicated to the conservation of areas of ecological significance. The Nature Trust expressed an interest in purchasing the property and leasing it to the province for the public benefit, but had reservations about the asking price. The owner agreed to donate part of the land in return for an agreement by the Ministry to attach his family name to the park that would be created. However, Ministry policy dictated that such an arrangement was possible only when over 50 percent of the value of a property was donated.

As the owner was actively negotiating with other possible buyers, the Ministry proposed an alternative: the creation of an ecological reserve, bearing the family name, on a point of land adjacent to the proposed park. Ecological reserves are areas of Crown land that are set aside to preserve rare or endangered native plants and animals, representative examples of natural ecosystems, and other areas specified by the Ecological Reserve Act.

Satisfied with the compromise, the landowner sold the land. There was only one catch: the Ministry had not secured the approval of its own Ecological Reserves Branch. Several months after completion of the sale, the Branch concluded that the site did not meet the criteria required by the Act. Although the point of land had been fenced off after the sale, much of its vegetation had previously been consumed by wild goats. Secondly, a nearby site with a similar ecosystem had already been designated as an ecological reserve.

When the seller learned that the Ecological Reserves Branch had concluded that the property was not suitable for designation as an ecological reserve, he suggested that the government either fulfil the commitment it had made to him or else compensate him for the difference between the amount for which he had sold the land and its appraised value — a difference of almost $30,000. After the Ministry advised the seller that neither option was feasible, the landowner came to us for assistance.

After examining the history of his complaint, we provided informal mediation that led to a compromise that proved satisfactory to the complainant, the Ministry and The Nature Trust. Under its terms, the Ministry agreed to designate the point of land a "nature preserve" that would be identified by the complainant's family name and feature an interpretive program with a focus on the history of the site's ecosystem and its recovery following the goat invasion. (CS89-101)

Ministry of Regional and Economic Development

Resolved	2
Not resolved	0
Abandoned, withdrawn, nonjurisdictional	1
Not substantiated	3
Declined, discontinued	2
Inquiries	1
Total number of cases closed	9
Number of cases open December 31, 1989	1

Promise made, promise kept

In November 1987, a representative of the B.C. Custom Car Association (BCCCA) approached this office with a story dating back to 1978. At that time, the Custom Car Association, which operated a competitive drag racing strip in Mission — and had done so successfully, with praise and awards from the American National Hot Rod Association — was approached by the District of Mission Development Corporation. The Corporation wished to purchase the land upon which the Association's facilities were located in order to provide the necessary land for a proposed industrial park to attract much needed industrial development and jobs to the Mission area.

The Association agreed in principle, as it did not wish to impede any development that would enhance the economic well-being of the community. An agreement was reached whereby the Corporation would pay BCCCA $1 million, which was considered to be an amount adequate for the Association to replicate its facilities at an alternate site. In addition, an alternative piece of land on the Fraser River waterfront was provided as part of the compensation package.

At this point a problem arose: the land was rough, undeveloped, and subject to flooding by the Fraser River during high water periods. To make the land suitable for drag strip development, extensive and expensive filling and flood proofing would be required. The cost of such development was beyond the resources of the Development Corporation, and the cash proceeds of the sale would not enable the Custom Car Association to both fill the land and replicate its former facilities. For this reason the Development Corporation sought provincial assistance in order to put together a compensation package that would induce the Association to complete the sale of its property so that the industrial park might proceed.

The Minister of Industry and Small Business Development at that time (the fall of 1978), after reviewing the situation, promised assistance as necessary to make the alternative site adequate for race track development, by way of grants that would be made for the benefit of the BCCCA through the Mission Development Corporation. An initial amount of $500,000 was mentioned, with additional funds as necessary. No written commitment was made at that time directly to the BCCCA.

On this basis, the conveyance proceeded and possession was granted to the Development Corporation on October 30, 1978. Shortly thereafter, the Ministry of Industry and Small Business Development commissioned the provincial Ministry of Environment to carry out a study on the alternate race site, with options for filling and flood proofing, including cost estimates. These options were then presented to the BCCCA, which chose the least expensive option, at a cost of $1.67 million. Thereafter, no assistance was forthcoming from the province, either financial or by way of material and services.

In 1980, after numerous requests for assistance by the BCCCA, the Ministry of Industry and Small Business advised the BCCCA that financial assistance could not be justified to an organization which had in excess of three-quarters of a million dollars (the proceeds of sale, less expenditure for certain site preparations) on deposit. The BCCCA was directed first to spend its available funds on filling and flood proofing as far as the funds would allow; it was assured that following this expenditure the province would step in and complete the job, including full replication of the race facilities previously enjoyed.

Although certain motor sport studies and

financing proposals circulated within government in the years that followed, no further assistance was rendered to the BCAAA. In November of 1987, its concerns were brought to this office.

Our investigation, including a full review of Ministry files, confirmed the chronology of events as described above. From this it was concluded that a promise had been made to the BCCCA, upon which it had directly relied in its decision to sell its former property. The BCCCA did not have the funds to challenge the government in court, nor was it certain that it could win such a case, given that technical arguments involving the law of agency and the authority of the Minister to bind the government in such a manner would likely be raised.

Our investigative report was submitted to the Ministry of Economic Development (successor to the Ministry of Industry and Small Business Development, and now referred to as the Ministry of Regional and Economic Development) with a recommendation that the government honour the promise made to the Association and commence negotiations with a view toward arriving at a dollar figure adequate for replication of the former facilities. Early in 1990, after more than 18 months had elapsed since delivery of our report, the government reached an agreement with the BCCCA for the provision of up to $2 million compensation to fulfil the promise. Thus the original promise was finally fulfilled. (CS89-102)

Grant denied for tourism promotion scheme

An entrepreneur developed a marketing project designed to attract tourists from the United States to take package tours by motor coach through the Canadian Rockies. He applied for a grant under the International Market Development Program of the Canada/B.C. Tourist Industry Development Agreement. He complained to this office when his application was rejected primarily on the grounds that the proposal did not offer incremental benefit to B.C. in terms of new markets or new destinations to be served.

The complainant considered it unreasonable that he had not been given an opportunity to present his case in person to the joint Federal/Provincial Management Committee which, under the Development Agreement, is responsible for approving or rejecting applications for assistance. He had, however, had the opportunity to present his case to the Ministry of Tourism and to the Provincial Secretary.

Following a review of the files, we concluded that the complainant had been treated no differently than any other applicant in the way his application had been processed and considered, and we therefore could not substantiate his complaint. We did not attempt to second-guess the experts' judgement about the merits of his proposal. (CS89-103)

Ministry of Social Services and Housing

Resolved	853
Not resolved	2
Abandoned, withdrawn, nonjurisdictional	370
Not substantiated	502
Declined, discontinued	319
Inquiries	158
Total number of cases closed	2204
Number of cases open December 31, 1989	432

Income Assistance Division

This was a year of "settling down" for the Ministry, following the major reorganization in 1988. We continued to build on our working relationship with the District Supervisors of the newly created Income Assistance/Employment Initiative Program (IA/EIP) offices, while considering several larger policy issues. The issues under consideration in 1989 year included:

1. Increased client access to income assistance files, in order to adequately prepare for appeals pursuant to the GAIN Act Regulations. We have some concern that the lack of written policy in this area has resulted in widely divergent practices in the field. It may be that some clients are not fully apprised of the information on file and are thus hindered in the preparation of an adequate case to argue before the GAIN tribunal.
2. Pro-rated benefits. A policy amendment effected in the summer of 1988 states that payment of benefits may not begin until the GAIN application is signed by the client. Since it is our experience that clients must often wait 7 to 10 days for an "intake" interview following their initial contact with the Ministry, it appears that this policy may penalize clients for delay caused by the Ministry.
3. Delays in the Daycare Subsidy Program, both in processing payments and in the application process. Ministry staff have been addressing this issue, and it appears that much progress has been made. The problem should be resolved in the near future.
4. The dental payment system. Ministry clients, classified as unemployable or handicapped, as well as single-parent families, are provided Ministry-sponsored medical coverage. Benefits include limited dental coverage, up to $500 in basic services per year. Dentists treating the Ministry's clients are required to contact the Ministry to ensure that the client has sufficient funds remaining (out of the $500) to cover the cost of treatment. Unfortunately, the information given to the dentist is based on billings currently paid, not the number of requests for "authorization." The dentist does not receive any information regarding outstanding billings. Thus the dentist may provide treatment only to have the billing refused because further billings were received after he or she contacted the Ministry. We believe that such an arrangement may be unfair, in that it appears to penalize dentists who provide treatment in good faith after checking that the client's "account" holds sufficient funds to cover the fees involved.
5. GAIN appeal tribunals. We are looking into the Ministry's practice concerning GAIN appeal tribunals because of several complaints related to delays in convening such tribunals.
6. Emergency medical coverage for clients who do not have Medical Services Plan coverage and are not eligible for Ministry-sponsored medical coverage. Although subsidized MSP is available for people on low income, not everyone knows that, and for many there is a three-month wait to establish eligibility. Although policy provides for emergency medical coverage, we have become aware that the Ministry's practice is now to refer such clients to the nearest hospital. The hospital can absorb part of the cost of providing treatment, but the client becomes indebted to the treating physicians. Since this debt is usually not collectible, the physicians may be put in the position of subsidizing treatment of the Ministry's clients.

In the fall of 1988 the Ministry began phas-

ing in the Family Maintenance Enforcement Program. The Program employs Family Maintenance Workers (FMWs), whose responsibility it is to make recommendations to the Ministry regarding clients who have or should have a maintenance order. The Ministry is empowered under amendments to the Guaranteed Available Income for Need Act to apply to the courts to obtain, or vary, a maintenance order and to enforce such an order through the Attorney General's Family Maintenance Enforcement Program. Since failure to co-operate with an FMW would result in the termination of income assistance benefits, we were concerned that some clients might be forced to decide between facing the wrath of a potentially violent ex-spouse or termination of benefits. However, the FMW is responsible for assessing any concerns regarding possible repercussions to the client, and can recommend that the Ministry not take any action regarding maintenance if such concerns seem legitimate. We have monitored this program since the fall of 1988 and have found that the complaints received about the program reflect frustration with the backlog of referrals to the program — a problem during the "phase-in" stage — rather than the result of any coercion on the part of the Ministry.

As part of reorganization in 1988, the Ministry created a new level of management, the Area Manager. Reporting to one of 10 Regional Directors, the Area Manager is responsible for between four and six District Offices in his or her area. District Supervisors must seek the approval of the Area Manager for spending authority in excess of pre-set spending limits, and for authorization in areas outside the Ministry's usual policy and procedure. This office has traditionally dealt with District Supervisors rather than with more senior staff when considering income assistance complaints, partly because of the urgent nature of many such complaints. While continuing to deal with District Supervisors with respect to problem resolution, we now plan to deal with Area Managers when considering issues related to quality control or systemic importance. However, it now appears that the Area Manager may be the most appropriate contact. Thus, we plan to begin dealing with the Area Managers rather than with District Supervisors early in 1990.

Since many of the Area Managers were District Supervisors prior to the Ministry's reorganization, and therefore familiar with our office, we anticipate an easy transition. We also look forward to re-establishing and building on the working relationships that pre-existed the Ministry's reorganization.

Income Assistance for Adults

Money for caskets but none for urns

The complainant's husband had recently died, and he was cremated according to his wishes. The Ministry paid the funeral home the cost of the ceremony and cremation, as authorized by the Guaranteed Available Income for Need (GAIN) Act regulations, but refused to pay for an urn for the ashes.

Ministry policy dealing with the burial or cremation of deceased individuals provides for reimbursement for a casket but makes no mention of containers for ashes. The Ministry's position was that, since there was no specific provision in the policy for such an expenditure, there was no authority to grant the purchase.

The woman's problem was solved when her lawyer, frustrated by the Ministry's position, paid for the urn himself. However, believing that the Ministry policy should be amended to correct what appeared to have been an oversight, we contacted the Income Assistance Division to request that the matter be reviewed. We were advised that the Ministry was currently reviewing its contracts with B.C. funeral directors and the B.C. Memorial Society and that the issue would be raised during their talks. At the time of the writing of this report, the Ministry's policy had not been amended. (CS89-104)

No replacement for cheque alleged to be stolen

In April 1989 an income assistance recipient complained to us that the Ministry had not yet replaced his January GAIN for Handicapped cheque, which he said had been stolen and then fraudulently cashed in late December 1988. Fortunately, the man's rent was paid directly to the landlord by the Ministry, so his shelter arrangements were not endangered by the loss of his cheque. His GAIN for Handicapped cheque

was intended for food and miscellaneous items only.

We were unable to substantiate this complaint. The Ministry must address the loss of cash or a mailed cheque, under the provisions of the GAIN Act regulations. There is no provision for reissuance of a cheque once the Ministry's records show that it has been cashed. If it has not been cashed, a "stop payment" is arranged and a replacement cheque issued. However, in this case the cheque had been cashed.

The Ministry met the man's need by providing him with three $30 food vouchers during January. Also he received his following month's GAIN for Handicapped benefits on January 25, the cheque issue date for February. (CS89-105)

Comments on file untrue, says IA recipient

A woman complained that the Ministry staff had recorded insulting comments on her income assistance file, alleging that she was a thief and an arsonist.

The matter was resolved when the Ministry's District Supervisor agreed to send the complainant a summary of the "running record" on which the allegations had been entered. She was to write a rebuttal of the allegations, which would then be placed on her file, with a notation on the original running record directing the reader to the woman's rebuttal. (CS89-106)

No information, no cheque

A woman thought it unfair that the Ministry had refused to release her GAIN for Handicapped cheque for May, even though her benefits had been reinstated following an appeal initiated at the end of April. Although the GAIN Act and regulations provide that benefits are to be reinstated pending the decision of an appeal tribunal, the Ministry had refused to provide the woman with her May benefits unless she signed a release allowing the Ministry to obtain financial information held by her solicitor. The Ministry considered it important that the information be available at the upcoming hearing of the appeal tribunal.

We did not look at the merits of the woman's appeal, as it was yet to be adjudicated by the tribunal. However, we were concerned that the integrity of the appeal process, including the reinstatement of ongoing benefits according to the GAIN Act regulations, be ensured.

The Acting District Supervisor expressed to us an unwillingness to issue the woman's cheque unless she signed the release form, even though such a position appeared to contradict the GAIN Act regulations. However, after we made several telephone calls to the Area Manager, and finally to the regional director, the Ministry agreed to release the cheque without having the woman sign the form in question, and the matter was thus resolved. (CS89-107)

Call to doctor confirms handicapped status

A man who had received no decision on his application for GAIN for Handicapped benefits after four months thought the delay completely unreasonable. He told us he had terminal cancer and did not expect to live longer than another two months.

We found that the delay was due to the fact that the man's physician had reported that the condition was not permanent — a necessary qualification for Handicapped status. Since the physician's report contradicted the financial assistance worker's report, the Ministry had written to the physician to ask for clarification. On being contacted by us, the Ministry immediately telephoned the physician, who confirmed that the man suffered from terminal cancer. The Ministry granted GAIN for Handicapped status the day after the complainant first contacted us. (CS89-108)

Home sweet home turns sour

A man complained that the Ministry had refused to give him a crisis grant for rent. He told us that after being released from prison three months earlier, he had been visited by some of his old acquaintances. They had arrived carrying baseball bats and had "trashed" his apartment, beaten him and robbed him. He had left the apartment, afraid to go back in case they returned. The hostel accommodation the Ministry had offered him was too close to his "old friends" for his safety, he told us.

The dilemma was resolved after we arranged a conference call between the man's probation

officer and the Ministry's District Supervisor. The probation officer said the hostel was an inappropriate shelter for her client. She added that the man was presently staying with a friend facing charges and that she would like him to move as soon as possible. She agreed to document her concerns in a memo to the District Supervisor, and the District Supervisor agreed to authorize a crisis grant for rent. (CS89-109)

A long stretch in the Kamloops bus depot

An income assistance recipient travelled by bus from Cache Creek to Kamloops to bring her eight-year-old daughter to see a specialist. She had a return ticket and was hoping to catch the 1:40 p.m. bus back to Cache Creek. However, the appointment with the specialist was at 1 p.m., and the woman and her daughter were still in the doctor's office when the bus left. The next departure was not for another nine hours.

The woman phoned the Ministry and asked that they pay the taxi fare to Cache Creek, as she did not think her daughter could wait that long for the bus. She also had a 13-year old son at home whom she was unable to contact, as the family had no phone, and she was concerned that her son would worry unduly when she failed to return at the expected time. The Ministry refused her request, as the taxi cost $80 and the trip to Kamloops had not been pre-authorized by the Ministry. The woman then called our office to complain.

Although the wait for the 10 p.m. bus would no doubt be tedious for the woman and her daughter, there was no medical reason why they could not wait. We felt that the Ministry's decision was reasonable under the circumstances. To ease the woman's concern about her son, however, the Ministry offered to send a social worker to the home to check on her son and advise him of his mother's whereabouts. (CS89-110)

Complaining about being forced to complain

A man contacted our office late in August to complain that the Ministry had refused to provide further hardship assistance unless he complained to the Employment Standards Branch about his previous employer, who owed him about $1,500 in back wages. With such "pending income", the man was not eligible for regular income assistance and had been issued only "hardship assistance" for the month of August.

The man told us he thought the process of writing to the nearest Employment Standards Branch office would unreasonably delay the receipt of his September benefits, which he desperately needed. He had tried telephoning the Employment Standards Branch office, only to be told that the office did not have a toll-free line and would not accept collect calls.

We arranged a conference call between the man and the Employment Standards Branch office, allowing him to discuss the details of his complaint with an official from the Branch office. Evidently the Employment Standards Branch was aware of the employer in question, as there had already been other complaints.

As a result of the conference call, the man agreed to go to the local government agent's office and fax further details of his complaint to the Employment Standards Branch, indicating his need to provide confirmation to the Ministry. The Branch could then send the immediate confirmation of his complaint against the employer, and the man could then forward this documentation to the Ministry of Social Services and Housing.

We informed the Ministry of the arrangement and promptly received an assurance that the issuance of further hardship assistance would be approved. (CS89-111)

Income Assistance for Youth

Income Assistance for Legal Minors

In most Canadian provinces the age of majority is 18; in British Columbia it is 19. This means that in B.C. persons under the age of 19 are considered to be dependent minors whose welfare is the responsibility of their parents. They are, by law, considered to be "children" when applying for income assistance under the Guaranteed Available Income for Need (GAIN) Act and regulations.

Complaints from or about youth applicants for income assistance are frequently received by our office. Last year's Annual Report (page 84) reported on a number of policy concerns that we were discussing with the Ministry. The tone of these discussions during the past year has been constructive, and progress has been achieved.

In July 1989 the Ministry introduced a revised policy intended to provide close monitoring of short-term income assistance benefits to children, when it is determined that "living away from home is the best plan and the parents are unable to provide financial support". This policy authorized or required:

— An appeal for youth applicants when they consider a decision to be unfair;

— Area Manager approval for income assistance to youths living in a spousal, conjugal or common-law relationship;

— The granting of income assistance on a temporary basis during the period of review of an application;

— Income assistance for an infant child of a child-in-care who is living in an approved resource or independent living situation;

— A social work assessment for all applicants under the age of 17 and, where there are child protection concerns, for all applicants under the age of 19;

— An immediate referral to a Rehabilitation Officer and to a Family Maintenance Worker when there are no protection concerns and the parents are not willing to support the child;

— Provision of help in the development of employment plans for youths who have no work experience.

It can take time for a new policy to be well understood and applied consistently in district offices. Sometimes policy amendments are required in order to take into account the experience of field staff. Ministry officials have monitored this new policy and indicated their preparedness to improve it, based on feedback that has been provided.

As part of this process, consultations continued during the past year between Ministry officials and our office. Outstanding areas of concern identified by our office include:

1. Continuing practice inconsistencies in district offices when discretionary decisions are made about eligibility for 17- and 18-year-old applicants in similar situations.

   In some cases, youths are refused assistance based on limited information about family situations. Financial assistance workers (FAWs) are not authorized or trained to assess family dynamics or matters pertaining to the safety and well-being of the "child". In some cases, youth are being denied assistance without benefit of review through a social work assessment when parent-child problems are cited or when the parent(s) and youth agree that it is in the youth's best interests to live independently but the parent has no means to support the youth. We have suggested that the Ministry consider amending the current policy to ensure that 17- and 18-year-olds are routinely referred for a social work assessment when it appears, on preliminary assessment by a FAW, that a youth may not be eligible for assistance and where the youth cannot or will not go home. This would ensure that the youth's well-being is properly considered in determining the most appropriate plan and that family support services are offered if appropriate.

2. Inconsistent practices related to decisions made about the eligibility of youths who are completing or want to complete an educational program. In some cases youths are denied income assistance because they are in high school, while others receive assistance while attending high school.

   While income assistance is designed to provide short-term assistance until an employable individual finds work, the ministry's rehabilitation programs recognize that, for many clients, further education and training are required to better prepare them for the workplace. This is often necessary for youths without work experience and job skills. For some youths, long-term independence can best be achieved when they have completed a high school program. An explicit statement in policy may be required to indicate that youth are not ineligible for assistance merely on the basis that they are completing or want to complete high school courses. An educa-

tion training assessment may be needed to ensure the best plan for a youth. Interim assistance could then be provided pending the outcome of this assessment.

3. The routine provision of easily understood written information to youth outlining service and review options that are available, including access to child welfare and other ministry or community services, appeal mechanisms and the Ombudsman.

Seventeen- and eighteen-year-old youths are in a transition stage where, for GAIN Act purposes, they are legal minors and dependents. However, the child welfare system views them as young adults who are usually capable of protecting themselves. Few appropriate and available child welfare resources exist for older adolescents. For youths who may require assistance to establish themselves independently, support systems are complex. Within the Ministry of Social Services and Housing, they may be required to deal with a FAW, a social worker, a rehabilitation office and a family maintenance worker. Many youths also have probation officers, mental health workers and other counsellors. To inexperienced youths who require assistance in making the transition from legal childhood to independent adulthood, the helping system can appear like a maze. Access to information that is easy to understand is essential.

Other matters require monitoring to ensure that there is service responsiveness, fairness and consistency. One such matter is the provision of necessary social support services to youths who are learning to live independently. In some cases, professionals have expressed concerns to this office that financial assistance sometimes appears to be used as a social program because more appropriate resources are not available through the child welfare system. All youths require continuing supports of a social and emotional nature when they first move into independent living. For youths on income assistance this support is not always available from parents. Short-term supports provided at this critical transition stage may result in long-term benefits by establishing youths on the road to independence.

The distinctive and often complex nature of income assistance programs for legal minors has been recognized in Ministry policy. This program must be closely linked with child welfare, rehabilitation, child-in-home-of-relative and other Ministry services. Some Ministry officials have suggested to our office that the volume of cases and complex nature of this service require specialized attention in district offices. For example, one official suggested that responsibility for under-19 income assistance be assigned to FAWs with special training.

Continuing progress in ensuring fairness for youths applying for income assistance is expected during the coming year.

Request for assistance misdirected

A 17-year-old called our office to complain that the Ministry had not listened to her request for assistance and did not understand what it was that she needed. A part-time employee, earning $4 an hour during an average 20-hour week, she had asked for financial assistance to bring her salary up to a level that would allow her to support herself. She said she had been abandoned by her parents and had no other family, and was trying to put her life in order. The Ministry had offered her a hardship grant as "once only" help, but had denied her application for ongoing assistance.

We were struck by the softness and timidity of this young person's voice, and it came as no surprise to discover that the Ministry staff member to whom she had spoken had misunderstood the request for assistance. It also became apparent that the complainant had requested assistance from the wrong office, so we directed her to the Family and Child Service office in her area and suggested she call us again if she needed further assistance.

At the time, the Ministry was reassessing the procedure of processing applications for assistance from persons under 19 years. The receptionist in the office to which we had referred the complainant said she need not see a social worker but could apply for financial help directly by submitting an application at an income assistance office. Although the receptionist was operating with the best of intentions, the complainant had now been referred to three different offices and was beginning to find the shuffling back and forth all too intimidating. She called us again for assistance.

We contacted the intake social worker with the Family and Child Service office to explain the young woman's predicament. The social worker recognized her name from a previous involvement through the counselling agency where the social worker used to be employed. Recognizing that the complainant was not assertive and was easily intimidated by those in positions of authority, she assured our office that if the complainant were to call her, she would help her with her application for assistance.

We gave this advice to the complainant, who advised us that she had already received a call from the social worker, who had arranged to meet her after work and had helped her to obtain the assistance she needed as well as support services that could be beneficial to her. The young woman's needs were well served by a social worker's willingness to go the extra mile to assist someone who was trying very hard to make a positive change in her life. (CS89-112)

Marriage opens doors to income assistance

An 18-year-old woman complained that the Ministry would not approve her request for income assistance. She said she was eight months pregnant and was living with the baby's father. Her common-law spouse, 25 years of age, was receiving income assistance as a single person while awaiting approval on a workers' compensation claim. The couple had requested that they be granted income assistance as a Unit of 2.

We suggested that the couple request a meeting with the woman's social worker to discuss the alternatives available to them. They met with Ministry staff, who informed the woman that she could receive assistance if she lived on her own or if she moved into a foster home but not if she continued to live with her spouse.

The District Supervisor for the Family and Children's Services Division suggested we contact the District Supervisor of the Income Assistance office. We then contacted the Area Manager, who also suggested we speak to the Income Assistance section, as the matter in question was an income assistance issue. We spoke to the income assistance supervisor, who suggested we refer the matter to the Income Assistance Division in Victoria. He agreed to contact the District Supervisor for Family and Children's Services in an effort to resolve the question of which office should assume responsibility.

The complainants subsequently informed us that they had decided to get married and that, as a result, the Ministry had approved their application for Income Assistance at the Unit 2 level.

This complaint pointed to two serious problems. The first involved the lack of clarity in the roles of the Family and Children's Services Division and the Income Assistance Division. The Family and Children's Services Division carried out the social assessment for persons under the age of 19, but could only recommend approval for payment of benefits, which was handled through the Income Assistance Division. The second difficulty involved Ministry policy, which stated that income assistance benefits could not be paid to a person under the age of 19 if that person was involved in a common-law relationship.

Following discussions between this office and Ministry officials, the income assistance policy was changed to permit the Area Manager to approve the granting of benefits in the case of common-law relationships involving a person under 19 years of age. In addition, appeal provisions were clarified to ensure that persons under the age of 19 could appeal a Ministry decision denying benefits.

Although the respective roles of the two Ministry divisions relating to persons under the age of 19 have been clarified over the past year, we continue to have concerns about situations where a person's application for income assistance is processed without ensuring that there are no protection concerns. We believe that this is most effectively done through a social assessment by the Family and Children's Services Division in instances where there is serious parenting conflict or a youth states that he or she cannot live at home, but is unclear about the reasons. (CS89-113)

Out of money, youth moves to streets

Determining what is in the best interests of a youth who has left home depends very much on individual circumstances, including an assessment of the maturity of the individual.

A 17-year-old who requested our assistance with his application for income assistance had left his home and relocated to another town. He was on probation, and his probation officer urged him to stabilize his life. He told us he wanted to complete his education but had been living on the streets because he had no money. The Ministry had turned down his request for financial assistance and instead had offered him a foster care placement, which he had refused.

The District Supervisor told us he was concerned about the youth becoming involved in a destructive lifestyle. The social worker assigned to the young man's case had been told by his mother that she helped her son financially as much as she could, but problems arose when he refused to abide by house rules. She would be happy to have him return home as long as he understood that there were rules which must be respected.

The District Supervisor told us that after the mother had been contacted, he had discussed with the youth the potential hazards of life on the streets. He offered to place him in a foster care resource that was suitable for older teens and to help him enroll in an alternate school program. He told the youth that he was willing to assist him in any way he could, providing he agreed to abide by some basic rules, set some reasonable goals, and make an effort to achieve them.

The youth agreed to consider the options offered by the Ministry, and our office acknowledged the respect afforded the complainant by the Ministry's efforts to give him an opportunity to succeed. (CS89-114)

Laid-off worker too young for IA

Until recently, Ministry of Social Services and Housing policy stated that income assistance was not to be granted to anyone under the age of 17, although exceptions were made in practice. The formal policy (later altered because of its effect of fettering the Minister's discretion) was based on the premise that parents must take financial responsibility for their children.

A 16-year-old complainant who was laid off work applied for income assistance and was turned down. He told us he had lived away from his parents for three years because of irreconcilable differences of opinion about religion. His rent would soon be due, and he was feeling desperate.

The Ministry's social worker said he had no authority to recommend income assistance for a person that age. He acknowledged that the youth had not been given information about his right to appeal the worker's decision. We then called the Area Manager, who said that he was not aware of any 16-year-olds being granted income assistance in that region. However, he confirmed the fact that the youth had the right to apply for assistance and to appeal if denied. He also agreed that a thorough social assessment should be undertaken by a social worker.

Following our intervention, such an assessment was conducted. The youth agreed that the best plan for him would be to move in with his sister in another community. The Ministry assisted the youth in making this move. (CS89-115)

Benefits delayed by incomplete application

A significant number of problems brought to our attention result from confusion about procedural requirements imposed by government Ministries. This is especially true where applications for funding are concerned. All citizens have a responsibility to ensure that they understand and comply with necessary procedures, but the impact of a "missed step" on persons in financial need underscores the importance of efforts being made by the Ministry of Social Services and Housing to ensure that all income assistance applicants fully comprehend what is required of them.

A caller complained that the Ministry was refusing to provide his 18-year-old common-law wife with income assistance. The couple had lived together for more than a year and had a three-month-old baby. He said it was very difficult to care for his wife and their baby properly as his income assistance benefit covered only himself

and the baby. He had recently been laid off and had a six-week wait for UIC benefits.

Common-law marriages involving minors are not given the same recognition as legal marriages in Ministry policy. The Ministry's District Supervisor told us that a social assessment would have to be done as the common-law wife was considered by the Ministry to be a legal minor living with an adult, and a determination would have to be made whether the arrangement was in the minor's best interests. He arranged for a social worker to see the couple right away. Apparently the wife had not accompanied the caller when he applied for income assistance, and hence the information required by the Ministry was incomplete.

We suggested to the caller that he and his wife make an appointment with a financial assistance worker so that their application could be completed. They did so, and the caller's unit rate was increased to cover all three members of the family. (CS89-116)

Foster parent application meets obstacles

A man called us to say he had been caring for a 17-year-old youth for the past three months with the consent of the youth's mother, who found it impossible to deal with him. She was on income assistance and could not afford to support her son. Mother and son both agreed that he couldn't return home, and the caller had applied to be a foster parent.

The Ministry's social worker explained that a restricted foster home placement study in progress was complicated by the fact that the caller had a previous criminal record resulting from an impaired driving conviction. Further, the Ministry was concerned by the single status of the prospective foster parent, whose job often required him to be away from home.

The Area Manager told us that in light of these factors, it might be preferable to provide the youth with income assistance rather than take the youth into the Ministry's care and approve the caller as a foster parent. The caller told us that this alternative was acceptable to him. As a result, the youth was placed on income assistance and continued to live with the caller. (CS89-117)

Young mother seeks home of her own

A mother could not understand why the Ministry had refused to provide her 18-year-old daughter the income that would enable her to live on her own with her baby. The mother and daughter had agreed that it was in everyone's best interests for the daughter to begin to establish her own life independent of her mother, who was planning to remarry.

The Ministry's policy was that, as a general rule, anyone under the age of 19 should be the financial responsibility of a parent or guardian. In this instance, however, the mother was on income assistance herself and hence felt unable to provide financial support for her daughter and grandchild in addition to her two other younger children. Her daughter wanted to complete high school and planned to find part-time employment.

The Ministry's initial position was that the youth was not entitled to receive income assistance until she became an adult, in the eyes of the law, at the age of 19. The District Supervisor to whom we spoke said she thought minors did not have the right to appeal Ministry decisions. We confirmed with the Income Assistance Division that minors did have the right to appeal, and we advised the complainant and the District Supervisor of this fact.

Meanwhile, Ministry officials agreed to review the decision not to grant income assistance, and decided to reverse it. This resolved the concerns of the complainant, whose daughter and grandchild then moved out to live on their own. (CS89-118)

Children in the Home of a Relative

Assistance provided to youth in care of aunt

A 17-year-old youth told us that his aunt, with whom he was living, was receiving no financial assistance for his care as the Ministry had not approved "Child In the Home of a Relative" (CIHR) benefits for her. The youth said his father had refused to complete the forms required by the Ministry so that his aunt could receive

payment. He said his aunt had received the CIHR benefits on his behalf prior to his hospitalization several months earlier.

We contacted the District Supervisor , who met with the youth and his aunt in an effort to resolve the problem. Arrangements were made for an interview with the youth's parents. The required documentation was completed, and CIHR benefits were approved.

It is not uncommon for youths to find themselves caught in the middle between the Ministry's need for information and a family member's reluctance to provide the necessary documentation. Our office is often able to mediate a resolution to cases of this type. (CS89-119)

Rehabilitation and Support Services

While the down-sizing of institutions was welcomed by many, some families expressed concern about the quality of care that their family member will receive in the community. In addition, many parents worry about the effect the change in living circumstances will have on their child. For some individuals with special needs, change can be very difficult whether it involves a move from an institution to a group home or just a move from one home to another.

Care-givers move in, maintaining stable home for youth

A mother contacted us after being advised by the Ministry that her 15-year-old son would be moved to a new home because his current care-givers were not able to provide care. The mother was concerned because her son would be losing contact with people he had come to know as a second family.

When we contacted the local supervisor we were informed that the Ministry had a plan that it hoped would be acceptable to the people involved. Rather than move the handicapped people from their home, the Ministry had located new care-givers to move into the house. While there would be a period of adjustment for everyone, we were satisfied that the Ministry was attempting to keep the disruption to a minimum. (CS89-120)

Help on the way for three special-needs children

A single mother of four children, three of whom were special-needs children, complained that the Ministry of Social Services and Housing was not prepared to assist her with the exceptional costs associated with her children's needs. She told us it was imperative that she have medical coverage because her children required specialized medical attention and she was afraid she would be unable to afford her premiums. In addition, she could not pay for the special food required for two of her children.

Ministry staff informed us that the complainant had misunderstood the position of the Ministry, which was prepared to ensure medical coverage was provided as well as help with dietary needs. The social worker agreed to contact the complainant and discuss the situation with her in detail. The mother was relieved to learn that her children's needs would be met. (CS89-121)

Limited daycare options for special-needs child

Finding and maintaining suitable daycare is hard at the best of times, and harder for the parents of special-needs children. One such family contacted us. They had found a licensed family daycare situation for their two-year old daughter, who has Down's syndrome, and approached the Ministry for a subsidy. The Ministry has authority to subsidize such placements, and often does so by paying above the "going rate" to the daycare giver in recognition of the fact that these children need more than average time and skill and that the daycare giver may take one such child rather than two "regular" children.

In this case the Ministry had refused the subsidy. The parents were pleased with their daughter's progress, felt the resource was much better than previous daycare arrangements, did not want to move the child, and felt the Ministry should support them.

The difficulty faced by the Ministry had to do with the number of children in the daycare facility. A daycare giver is allowed to have up to seven children, and the facility in question had seven. Counting the complainants' child,

three of the seven were classified as special-needs children. This is permissible under the daycare licence, but is in philosophical conflict with the licensing requirement that there be one trained staff for every four special-needs children in other kinds of daycare settings. Ministry officials did not believe that one relatively untrained person could look after three special-needs and four other children day-in and day-out without something giving and somebody's needs being unmet.

Despite the fact that some of the people involved were starting to square off in their corners and to doubt one another's motives, everyone seemed genuinely concerned to meet the child's needs. Since the child was already in this resource, and moving a child can be difficult, we asked the Ministry to look at other options for responding to the situation. The Ministry agreed to offer the parents the choice of a different approved space or the provision of trained-worker time. Under the latter option, a worker would go into the daycare home to work with the child a couple of hours each week and would work with the daycare giver to enhance her skill level. This option cannot work unless the daycare accepts it, but is the most that can be offered in such a situation. (CS89-122)

Family and Children's Services Division

We often receive complaints from parents concerned about lack of services for their children. Parents often seem confused about how to access services, as there are so many ministries involved in delivering services to children and youth. This can sometimes be resolved by one of the ministries taking a leadership role in pulling together all of the professionals representing the various ministries. An agreement can then be worked out as to who should coordinate or manage the case-planning process, and the roles and responsibilities of the various professionals can be clarified. Problems arise when the child falls in the gap between the mandates of the various ministries. Our office has identified this issue as a serious problem which will form the basis of a major study and public report in 1990.

Family Support Services

Help provided for boy with behavioural problems

The mother of a 10-year-old boy told us her son had a learning disability and serious behavioral problems and had been suspended from school indefinitely. She said she was concerned that there were no services available to help him. The complainant told us that the Ministry had advised her that she would have to abandon her child before the Ministry could apprehend him and place him in a foster home where he could receive the required help. She said she had asked the Ministry if her son could be referred to the Children's Foundation but was told that he would have to be assessed first, even though he had been involved with the mental health centre and had undergone extensive psychiatric testing.

We contacted the District Supervisor, who reviewed the situation and assigned a more experienced social worker to the case. The District Supervisor then arranged a successful meeting between the complainant and the professionals involved with the child. This resulted in a satisfactory plan to provide services to the complainant's son. (CS89-123)

Mother fears for runaway daughter

A distraught mother was upset that her 15-year-old daughter had run away from home and was living on the streets. She had asked Ministry officials to apprehend her daughter for her own protection, but they had refused.

A social worker told us that support services had been offered to the girl by the Ministry and had been refused. The worker said she had no authority to restrain the girl forcibly and take her to a facility against her will. Even if she had that power, she added, it would be ineffective if the girl chose to run away again. The social worker said she shared the mother's concerns for the girl's safety — she was believed to be abusing alcohol and drugs — but appropriate facilities to care for adolescents like her were in short supply.

During our discussions with the Ministry, the girl's best friend was hospitalized. According to the social worker, this event removed a strong

negative influence, and a meeting was set up with the girl and her mother. The social worker said she was prepared to discuss with the mother a care agreement whereby the Ministry would place the girl in a group home pending efforts to encourage her to return to her parents' home and seek professional counselling.

The mother told us she was satisfied that the Ministry was acting appropriately and acknowledged that her daughter was of an age when her compliance with plans for her protection would have to be obtained. The matter, at least in the short term, appeared to be resolved. (CS89-124)

Planning the future for stroke victim's daughters

The typical Ministry file shows intervention or assistance in response to allegations of abuse or neglect, but the Ministry also becomes involved with families in other kinds of crises. Accidents and debilitating illnesses may leave children without parents or without a clear legal guardian, and the Ministry must act to ensure the protection of these children.

In one such case an 18-year-old whose mother had had a stroke called us. She was in a foster home and wanted to be able to live on her own. Her 9-year-old sister was in a different foster home, and visits between them had been restricted. Now, the caller said, the Ministry planned to place her sister for adoption and to sell family furniture because the mother would never be able to live at home again.

When we became involved it was clear that the older daughter had been confused, perhaps because of fear. She had been included in some meetings to discuss the future, had misinterpreted discussion of options to be actual decisions, and had upset her sister when she relayed information in an inappropriate manner. In fact, the Ministry was still considering choices. The father, who lived abroad, was not a likely candidate to provide a home. Consequently the Ministry was taking steps to see if the younger daughter could also live in the home where the mother was to be placed, contacting other family members to see if they could provide a home, and considering the possibility of looking for an adoption home. The family apartment had to be vacated, but it was not yet certain what would happen to the furniture.

We explained to the complainant that she could be part of the planning process, but only if she would agree to be careful about what she told her sister. Everyone was upset already, and it was important to keep things as stable as possible for the 9-year-old. (CS89-125)

Child and Youth Protection Services

Parents criticize apprehension of adopted daughter

Acting on a report that a 12-year-old youth was being abused by her adoptive father, the Ministry apprehended her. The parents complained that the Ministry's actions were inappropriate and unwarranted.

Our investigation focused on three specific complaints. The first was that the Ministry erred in not giving the child's father the option of moving out of his home as an alternative to apprehending her.

When an allegation of abuse of a youth is received, the social worker assigned to the case must quickly make a decision regarding appropriate action for the Ministry to take. This decision is based on the risk the child faces, taking into account the information available to the worker at that point. The Ministry usually considers three factors in deciding whether or not a youth can remain in the home if the person who is alleged to have abused the youth moves out. First, the allegations must only relate to the person who agrees to leave. Secondly, the Ministry must be satisfied that the remaining parent can ensure the youth's safety. If there is doubt in either area, it is unlikely that the Ministry would permit the youth to remain in the home during the course of the investigation. Thirdly, a youth's views are taken into consideration. According to information contained in the file, the child specifically asked to be removed from the home.

In this instance, the initial allegations were directed towards both parents. Consequently the social worker was acting according to the provisions of the Family and Child Service Act and Ministry policy in apprehending the child

and removing her from the home. The review conducted by the Inspections and Standards Unit for the Superintendent found that the social worker's decision to take the child out of the home was appropriate to ensure her safety and well-being. In summary, we found no evidence to indicate that the Ministry erred in removing the child from the home.

The second complaint involved notice of the Ministry's initial report to court. The Family and Child Service Act requires that the Ministry present a report to the court within seven days of the apprehension so that the court can review the Ministry's decision. The complainant stated that the Ministry had not given him adequate notice of the report to court following his daughter's apprehension.

The Family and Child Service Act does not require the formal serving of notice to the parents prior to the report to court. However, we believe that adequate notice of a court appearance is essential to allow the participants to consult with legal counsel and prepare for the court appearance. We reviewed the documentation provided with this principle in mind.

According to the findings contained in the Superintendent's review, the staff member involved in the apprehension said he informed the complainant that there would be a report to court within seven days of the apprehension. The person conducting the Superintendent's review also interviewed a different social worker, who said that he told the complainant of the specifics of the time and place of the report to court the day preceding the court appearance.

The child's mother stated that when her daughter was apprehended, she tried a number of times to contact someone in the Ministry who could advise her about what was happening with respect to the investigation. She said that the worker was either not in or not available and did not respond to her messages to call back. Six days after the apprehension, the couple contacted a lawyer. The lawyer called the Ministry and was informed that the report to court was scheduled for the following day. The following day, less than one half hour before the court appearance, the worker called the parents.

Although the Superintendent's review stated that notification was provided, there was no documentation on the file to this effect, nor were there notes in the file's running records to support or contradict this position. Based on this lack of documentation, the evidence of the two workers who said they gave oral notice, and the fact that further investigation would be of no benefit to the parents, we discontinued our investigation into this complaint.

A notation on the Ministry's file indicated that the parents were represented by a lawyer. The file information also stated that the court asked that the child be consulted as to whether or not she should be returned to the home pending a full court hearing. The child apparently stated, in the parents' presence, that she did not want to return home.

Based on this information, we were satisfied that the length of notice of the report to court did not adversely affect the outcome. Given the nature of the allegations and the fact that the child did not want to return home, we did not think that more advanced notice would have altered the result. However, we were concerned that the file did not contain specific information documenting the notification at the time that it was given. We believe that the Ministry should take steps to ensure that such documentation exists.

The third complaint was that the Ministry acted improperly in denying the parents the opportunity to question the child about statements she made to social workers and the police about being abused. The parents stated that they wanted to get a sense from the child as to whether or not she was determined to leave home.

According to the information on file, the child's parents, in the presence of the social worker, asked for the child's response to several questions about the allegations. In a subsequent interview, attended by the child's parents and a different worker, a set of prepared questions were put to the child by her father. A third meeting was held at the parents' home at their request. The file noted that the social worker would not permit the child's father to discuss the possibility of the child returning home or the matter of the abuse allegations.

We believe that the Ministry does have discretion in determining what information should be discussed with a child in a matter that is before

the court. The court had given custody of the child to the Ministry with supervised access to the child's parents. In the course of supervising access, the Ministry has the authority to prevent discussions related to allegations. It is up to the Ministry to decide if the questions will have a negative effect on the child or are in her best interests. As the Ministry was acting within its authority we were unable to substantiate this complaint.

In the course of our investigation, the family raised several issues they felt should be addressed:

1. Lack of follow-up after the apprehension to involve the parents in a possible resolution.

   According to family members, the social worker only seemed concerned about the child's position, and there was no one to work with the parents to resolve the issues that led to the problem.

   Although the Ministry is committed to maintaining the family unit, its first responsibility is the safety and well-being of the child. The social worker assigned to investigate a protection complaint must be very sensitive to the child's perspective. This may lead to a perception that the worker is taking only the child's position. To bridge the Ministry's dual role of protecting children and supporting families, the Ministry sometimes appoints a social worker who is not involved in the apprehension to work with the parents. This is most commonly done to accommodate the transition of a child back into the home when the court grants a short-term custody order and where the objective is to return the child to his or her home. In this particular situation, the child had taken a strong position that she did not want to return home, and permanent custody seemed likely. Therefore this alternative was not considered necessary.

2. Lack of accountability for children who implicate innocent parties in an abuse allegation.

   We discussed the safeguards that are provided by the Family and Child Service Act, including an investigation by the Ministry and the court process, which provides the opportunity for legal representation of the parents' position. For the child, the consequence may be removal from the family with placement in a foster or group home. We explained that little can be done in terms of legal action against the child if he or she makes a false allegation.

3. Minimal follow-up support for parents who adopt a special needs child.

   Family members stated that they felt the Ministry should assign a social worker to provide information as to how best to deal with a child who may have been abused or neglected prior to adoption. They said their child had been in five foster homes prior to her adoption and that the parents had not been properly informed of her special needs.

   We explained that the Ministry's social worker involved in the adoption placement has a responsibility to inform the adopting parents of a child's special needs. Ministry policy requires the adopting parent's worker to advise the parents of the child's background, including a review of all the medical history. Although the Ministry's policy manual does not specifically define what the background history should include, we believe workers involved in the adoption should inform parents of previous physical, sexual or emotional abuse. The parents should also be provided with any other information that could affect a child's behaviour after adoption. Ministry officials state that social workers are encouraged to provide the adopting parents of special needs children with as much information as possible to make the adoption placement successful for both the parents and child.

4. The social worker who apprehended the child stated that he would get back to the family the following day but this did not happen. When the social worker did not contact the parents as promised, their confidence in the investigation was undermined from the very beginning.

   According to information on file, the parents asked the social worker, at the time of the report to court, why he had not returned phone calls. The social worker's response was that he was too busy.

   We believe that good social work practice requires Ministry staff to follow up on any

commitment they make to call someone back, regardless of workload or changes in circumstances that might occur in the intervening period. We discussed this with the District Supervisor, who agreed to remind staff of the importance of returning calls as promised.

5. The Ministry first named both parents as placing the child at risk but then dropped the allegations against the child's mother.

We found that the initial disclosures were general but later were more specifically defined. For example, it was clarified that although the child's mother was present, she did not participate in the allegedly excessive discipline. We believe that it was not unreasonable for the Ministry to change its position based on more complete information.

6. The Ministry's review did not look at why the child was not placed out of town when the social worker said she would be.

The parents stated that they initially thought that the investigation would only last a day or two and that the child could remain near town, but not right in town, as they were concerned about the effect this might have on their reputation. When it became evident that the child would not be returning home, the parents asked that she be relocated to another area some distance from the family's home.

According to the Ministry's running records, two days after the apprehension the child was asked to remain in her home area so she could go to school there. We found no reference to an out-of-town placement for the child until almost two months later. At that point the child stated that after the court case she was not sure if she wanted to remain in her parents' home town or move to another area. The child subsequently moved away from the community.

Although the Ministry ultimately has the authority to decide where to place a child who is in care, it is our position that, in the case of temporary custody orders, parents should be given reasons when there is a change in placement, provided such information does not place the child at risk.

7. Alleged incompetence of the social worker who handled the protection investigation.

Family members stated that there had been several complaints involving the local Ministry office and that this might be a reflection of the quality of service being provided.

We found that the Ministry's report only looked at the role of the social worker with respect to this case. Our investigation also focused on the specifics of this complaint. We discussed the basis for a broader investigation, explaining that we sometimes do a more general investigation if we receive several complaints involving the same office. However, in this situation, we did not believe there were grounds to justify a broader review. Therefore we limited our focus to the specifics of this case.

8. Concern as to whether or not the Ministry's report included any previous allegations against the child's natural father.

We informed the family that specific questions with respect to the contents of the Ministry's report would have to be directed to the Ministry. We discussed the question of confidentiality of the Superintendent's review and informed the family that we would not provide a copy of the report or discuss the specific recommendations. We stated that the findings of the report were consistent with our findings that the Ministry had acted in accordance with the terms of the Family and Child Service Act and Ministry policy.

9. Lack of information available to families at the point of first contact with the Ministry.

We have suggested to the Ministry the need for an information brochure that outlines the steps involved in the Ministry's investigation of a child abuse allegation and that could be provided to families upon first contact. We explained that this is currently being reviewed by the Ministry's Family and Children Services Division and that we anticipate that it will be completed in the near future. Family members stated that in this particular situation an information brochure could have prevented much of the anxiety they experienced.

10. The child's name change.

The family stated that at the permanent custody hearing the judge ordered cancellation or annulment of the child's adoption, stating

that she would no longer retain the legal name of her adopting parents.

We contacted the Ministry's lawyer who was present at the hearing. He stated that although the parents had requested the court to make such an order, the judge said it was outside his jurisdiction to do so.

The court must have grounds in law for making an order. We know of no grounds the provincial court could have used to annul an adoption order made by the Supreme Court. It is our opinion that the normal name change process must be followed.

We discussed the question of the child's surname with the District Supervisor responsible for the office in the area to which the youth moved from her family home. He stated that the youth currently used a surname other than that of her adopting parents but that legally she must retain the name of her parents until her own name was officially changed. The Name Act requires the consent in writing of a child who has reached the age of 12 years. The District Supervisor informed us that Ministry staff would assist the child with the name change process if she wanted to take this step.

This complaint provides a broad overview of issues that come up in the course of child protection investigations. Although our office was unable to resolve all of the concerns raised by the complainants, we reviewed the Ministry's position on each issue to ensure that proper procedures and protocols had been followed. As an independent third party, this office often clarifies information and satisfies residual concerns resulting from a complainant's involvement with the Ministry. (CS89-126)

No notice of apprehension, parent claims

A man called our office to say the Ministry had apprehended his six-year-old son while in his mother's care in another community. He complained that the Ministry had failed to inform him of the time and place for the report to court.

The Family and Child Service Act requires that the Ministry provide a report to the court within seven days of an apprehension. Formal notice is not required, but there is an expectation that the Ministry will notify the parents of the court appearance.

According to the District Supervisor, the social worker said that she recalled informing the father of the report to court but made no notation of this on the file. Without documented evidence, it was the social worker's word against the parent's word, and we were unable to resolve the complaint. However, we recommended that the District Supervisor instruct staff to record on file the particulars as to how and when the parent was notified. The District Supervisor subsequently informed us that he had instructed all staff in his office to properly record the details of notification.

Although the Ministry does not have a provincial policy to this effect, we believe that proper social work practice requires that this type of significant information be recorded on the file. (CS89-127)

A Christmas visit of great importance

Over the Christmas period we received a call from a woman who said that the Ministry might have to cancel her visit with her baby as there was no one available to supervise the visit. The baby had been taken into care by the Ministry when the complainant was hospitalized.

We contacted the Acting District Supervisor to make arrangements to have hospital staff supervise the visit. Although the Ministry office was short-staffed over the Christmas period, the Acting District Supervisor arranged the visit on very short notice. This meant a great deal to the mother, who wanted to spend time with her infant.

While this may appear to be a rather trivial issue, to the mother who was separated from her child due to circumstances beyond her own control, it was a very significant event. It is sometimes necessary to cancel visits due to transportation and supervision problems. However, in this particular situation, the Acting District Supervisor took the extra step to accommodate the scheduled visit. (CS89-128)

Mediation provides alternative to foster home

A 14-year-old youth said that his social worker

told him he had to move to a different foster home. The youth was concerned that he could not continue to reside in the foster home in which he had been living for approximately three months. He told us he was a temporary ward of the Ministry.

We contacted the youth's mother and the District Supervisor of the Ministry office. According to the information provided, the youth had committed a serious offence and was apprehended because he could not continue to live in his own home. Ministry staff, supported by psychological and psychiatric assessments, felt that the youth required a highly specialized resource suited to his special needs.

It became apparent to us that three factors affected the planning process. The first was the availability of a resource which could provide appropriate treatment and care. Secondly, there was serious disagreement between the Ministry and the youth's custodial parent as to what services should be provided through the Ministry of Social Services and Housing. The third hurdle was to develop a plan to which the youth himself could be committed.

During our investigation, the youth's father had become involved in the planning process. He told us he was willing to work toward having his son come to live with him. To permit time to pursue this option, the court extended the temporary custody order for an additional six-month period. Failure to develop an appropriate plan would likely result in the court awarding the Ministry permanent custody at the conclusion of this temporary order.

We were contacted by the youth's social worker, who requested our assistance in mediating a resolution involving Ministry staff and the youth's mother and father. Through a series of meetings a family service contract was developed which was acceptable to and signed by the youth, his mother, Ministry officials and the youth's father, who had agreed to assume custody in the future.

Although our investigation dealt with a number of side issues along the way, the crux of our involvement was mediating a final resolution which was acceptable to all concerned. Our role in developing the contract was to clarify information and to ensure that all parties had been heard in the process. We encouraged the youth's parents to have their respective lawyers review the agreement to ensure that it was satisfactory from a legal perspective. (CS89-129)

Youth seeks alternative to street life

A 16-year-old walked into our office to complain that the Ministry would not help him when he needed it. He said that since running away from his home community months earlier, he had been living on the streets. Now he wanted to get out of the street scene and find a place in a group home, but all the Ministry would do was offer him a bus ticket home. He told us he hadn't been mistreated by his parents, but there was no way he was going back to his home town. When he'd left it, he'd left it for good.

Ministry officials told us they were satisfied that there were no protection concerns with the family home. The parents had said they sincerely wanted their son to return, and the Ministry was not prepared to provide alternative services while that option was available. As the Ministry and the youth were firm in their respective positions, a stalemate existed.

Regardless of the justification for the Ministry policy of remaining uninvolved in circumstances where parents are willing to take children home, the hard fact here was that the youth continued to demonstrate an adamant determination not to return home, so that his only option was to continue to face the risks of living on the streets. We suggested that the Ministry re-evaluate its position on the matter.

The social worker involved arranged a meeting with a street worker, the "Reconnect" worker, an Ombudsman investigator, and the youth. In preparation for the meeting the social worker again contacted the youth's parents to explore some alternatives. It was suggested that if this young man was so opposed to returning home, perhaps he could find room and board with relatives. If that wasn't possible, the mother said, she would pay for one month's room and board to give him time to settle down and find work. The options were presented to the youth who, after some consideration, indicated that he would be happy to stay with a relative who lived in another town. His parents agreed to pay the cost of the room and board, and the youth, enthu-

siastic about the arrangement, said he would start looking for a job. The difficult matter was thus resolved. (CS89-130)

Daughter's boyfriend abusive, mother believes

A mother told us she was concerned about the fact that her 15-year-old daughter had left home and wanted to live with her 20-year-old boyfriend. She believed the man was abusing her daughter. She said that she had contacted both the police and the Ministry, but Ministry staff had taken no action to prevent her daughter from having contact with the man. The complainant said her daughter was unwilling to participate in counselling or provide information about her boyfriend's alleged abusiveness.

We were subsequently informed that the complainant's daughter had moved into an apartment with her boyfriend, was attending school full-time and working part-time.

We explained to the complainant that there appeared to be no legal recourse that could be taken to prevent contact between the youth and her boyfriend. We reviewed several alternatives, but none seem to fit the situation. The following options were considered:

1. Application for a peace bond. If a person believes that his or her personal bodily security is threatened, he or she can apply to court for a peace bond. This prevents the individual who is perceived as a threat from having contact with the possible victim.

2. Application for a restraining order. A restraining order is usually only used if there has been some wrongdoing — for example, assault or damage to property. A restraining order is similar, in its effect, to a court injunction.

3. Criminal proceedings. A criminal charge can be laid where there has been sexual contact between an adult and a child if, in the opinion of the police or crown prosecutor, there has been a breach of one or more of the sections listed in Part V of the Criminal Code. A Criminal Code conviction usually requires the child's co-operation in providing information that can be used as evidence in court.

We also considered the Ministry's option of apprehending the youth if it could be determined that she was in need of protection. However, the Ministry was constrained by the same legal requirements as was the parent.

We pointed out to the youth's mother that, in B.C., physical constraint can only be used if a person has committed an offence or is committable under the Mental Health Act. As neither the youth nor her friend met these criteria, both the parent and the Ministry were limited to persuasion and sharing information which might encourage the daughter to terminate the relationship. The Ministry informed us that the youth had been advised of the availability of its staff to assist her if she experienced problems or abuse in the relationship. (CS89-131)

Child protection investigations: the duty to report findings

The mother of a seven-year-old boy was concerned about the investigation of her family by the Ministry after her son was reported to have been acting in a sexually inappropriate manner with a young girl in the neighbourhood. A social worker had interviewed the boy at school without his mother's knowledge. The mother told us she had received no word from Ministry officials about the outcome of their investigation, and she was afraid the Ministry might label her son a sex abuser.

When rumours of sexual abuse are brought to the attention of social workers, it may be appropriate to interview children without first notifying their parents. It is of the utmost importance that a child's willingness to disclose information not be influenced prior to such an interview. We were, however, concerned about the alleged failure of the Ministry to notify the mother of its findings, and contacted Ministry officials.

The District Supervisor told us that two district offices had been involved and that there had been some confusion about which office bore responsibility for formally concluding the investigation. We were informed that the Ministry had no current protection concerns, and the District Supervisor agreed to discuss the matter with his counterpart in the other office.

Almost six months after the Ministry's investigation began and two months after its conclusion, the complainant received a letter from Ministry officials indicating that the investiga-

tion was over and that no presentation to family court was required.

In 1988, following receipt of a number of complaints similar to the above, we initiated discussions with the Ministry regarding its policies related to the conclusion of child protection investigations. The Ministry told us that these policies were under review and asked for our suggestions with respect to their administrative fairness.

The Family and Child Service Act provides the Superintendent of Family and Child Services with broad powers of investigation when a child is alleged to be in need of protection. The fact that this authority co-exists with the Ministry's policy of preserving, whenever possible, the integrity of the family may lead to tension when Ministry officials are charged with the responsibility of making judgements that may result in a temporary or permanent family separation.

Regardless of the nature of the outcome of an investigation, family members who have been subjected to the trauma of such a scrutiny expect and need to be promptly informed of its findings. When children are apprehended by Ministry officials following an investigation, parents are notified of their right to present their case to a family court judge, and in July 1989 the Minister tabled in the legislature a White Paper that would require the Superintendent to provide reasons to parents whose children have been apprehended.

When the Ministry has completed an investigation and does not apprehend a child, its findings may not be routinely or consistently communicated, and as a result the family may be left in a state of confusion and worry. Investigations that do not lead to apprehensions may result in any of a variety of outcomes: unfounded (no Ministry service required, file closed); not substantiated (services offered and refused, file closed); not substantiated (services offered and accepted, family service file opened); or uncorroborated (serious concerns about a child's safety or well-being exist, but sufficient evidence may not exist to apprehend and continued investigation or monitoring may be required without a family's consent).

Our 1988 annual report, pages 71 and 72, emphasized the need for clear, concise and formally communicated findings following the completion of all child protection investigations. The Ministry is obliged to investigate all allegations it receives that a child is, or has been, abused or neglected. The great majority of investigations do not lead to apprehensions and are not reviewed by the courts, but the very fact that an investigation occurs may interfere with the integrity of a family. Administrative fairness, in the implementation of the Ministry's policy of maintaining the integrity of the family, requires not only that child protection investigations be carried out sensitively but also that findings be clearly and promptly communicated, discussed and debriefed with family members.

Although the Ministry has not yet formulated a policy that implements the suggestions made in our 1988 annual report on this subject, we are hopeful that such a policy will be effected during the coming year. (CS89-132)

Father seeks limits on child neglect investigation

When the public interest requires uninvited intrusion by government into the lives of citizens, a failure to communicate clearly the reasons for an investigation, its findings, and the rights of persons being investigated may result in confusion and distrust. If, as a result, a government agency comes to be seen as an adversary rather than as an ally, the positive consequences of its involvement may be greatly hindered.

A father of two children called us to complain that he was being harassed by Ministry social workers investigating reports that his children were being neglected. He said his wife had recently been seriously injured in a motor vehicle accident and acknowledged that this had caused disruption in the life of the family. However, the social worker's visit and continuing calls were very upsetting to his wife, and he was concerned that they were having a detrimental effect on her recovery. He had pleaded with the social worker to leave them alone, to no avail.

Ministry officials explained to us that concerns had been raised in the community about how well the children were being cared for. The social worker said her investigation indicated the

situation was not serious enough to warrant apprehension of the children, but she felt the family needed support. Homemaker services had been offered and reluctantly accepted by the family.

This was clearly a case where the Ministry had legitimate concerns for the level of care being provided to the children but where apprehension was not warranted. Support services offered to the family would have to be voluntarily accepted to be effective. The caller viewed the social worker's offers of help as insensitive, bureaucratic and intrusive, but he was worried that a refusal of the offers might lead to further "harassment" by the Ministry.

We explained to the complainant that the Ministry is obliged to investigate all reports of child neglect. The fair approach on conclusion of an investigation is a thorough report of its findings to the subjects of the investigation. The complainant had received no written report from the Ministry.

The Ministry's Area Manager reviewed the case and agreed that the services being offered were optional: the complainant could accept them or refuse them. It was agreed that the complainant should receive a letter outlining the conclusions of the Ministry's protection investigation. This letter would reflect the Ministry's concerns about the care of the children but would clarify the voluntary nature of the services. No more contact would be made with the family unless requested by them or unless further allegations of abuse or neglect were received.

The complainant said that such a letter would be acceptable in resolving his concerns, and remained adamant that he did not want the social worker contacting his family again. (CS89-133)

Abuse investigation leaves mother sadder but wiser

The Family and Child Service Act places a mandatory duty on any citizen who has a reasonable belief that a child is in need of protection to report that fact. The Ministry must investigate every report and uses specially trained social workers to do so. Given the serious nature of allegations of abuse, investigations must be conducted with considerable sensitivity.

Our office was contacted by a woman who had been asked by a social worker to bring her child to a Ministry office to be interviewed, following a report that her new husband had been seen tugging on her child's coat. The woman was annoyed, as she did not think this type of report merited investigation.

The Ministry, it turned out, had a deeper concern, as the social worker was aware that the complainant's new husband had abused his children from a previous marriage. The Ministry made her aware of that past history. When the interview concluded, the Ministry was satisfied that her child was not at risk and that she would take steps to protect her child if there was any need to do so. The woman, a bit sadder and wiser, agreed that although it was disturbing to be contacted, the Ministry's actions had been reasonable and useful. (CS89-134)

Youth returns to mother despite grandmother's concerns

The grandmother of a 13-year-old youth told us she believed that her granddaughter would be at risk if she continued living at home with her mother. The grandmother had approached the Ministry about her concerns and had requested that the youth be placed with another family member.

The District Supervisor informed us that the youth had been apprehended due to abuse allegations but had returned home on her own initiative, as she refused to be separated from her mother. While the youth was in care, the Ministry provided her with counselling on how to protect herself and arranged for support to be available should she request it. We explained the situation to the grandmother, who agreed that this was the best option under the circumstances.

This case is characteristic of many calls we receive from families and friends concerned about a child's safety. As children become more independent and are able to participate more actively in decision-making, their wishes must be considered in the planning process. If a 13-year-old refuses to co-operate with the Ministry by not attending a particular resource, there

is little that the Ministry can do to force the youth to do so. Persons under the age of 19 can only be physically restrained if they are placed in custody as a result of committing an offence or are placed in treatment under the Mental Health Act.

We were satisfied that in this situation the Ministry acted properly in ensuring that the youth was aware of the available services and resources and that she knew who to contact if she ran into difficulty. (CS89-135)

Mother objects to sexual abuse investigation

Awareness of the tragic effects of child abuse has increased significantly in recent years, yet people who suspect abuse is taking place may be reluctant to report their concerns, either because they don't want to "cause trouble" or because they may be fearful of creating ill feelings on the part of those affected by an investigation. It is precisely because abuse has such long-term and harmful effects on a child that anyone who has reason to believe a child is at risk is required by law, under the Family and Child Service Act, to report her or his concerns to the proper authorities. There is no doubt that allegations of sexual abuse, if found to have substance, will have consequences for the abuser and the victim.

In spite of society's increased understanding of the damage caused by sexual abuse, its effects may be downplayed or dismissed when allegations come close to home and are made against respected citizens. Especially when the victim is an older child, there may be a tendency to assume that he or she somehow shares the responsibility for abuse. But children of any age are vulnerable to the power exercised by adults, and especially to that exercised by people they have learned to trust and respect. When that power translates to sexual abuse, adults to whom it is reported must respond in order to protect the victim from further abuse. What is fundamentally important, as recognized in the legislated duty to disclose, is that the consequences of turning a blind eye are inevitably far more damaging to the child than are those of intervention, in spite of the trauma that may result.

A woman who called our office was angry that the Ministry of Social Services and Housing had investigated an allegation that her husband had sexually abused their daughter. She said that as her daughter had disclosed the abuse to a counsellor in confidence, it was unethical for the counsellor to report the matter to the Ministry. No involvement by social workers should have taken place, said the complainant, because the information was never meant to be shared.

The young victim of abuse was living in a small town, and the abuser was a prominent member of the community. The victim became the target of anger from some family members because of the investigation that ensued and the resulting criminal charges. The Ministry social worker and District Supervisor in this situation were sensitive to the potential pressures faced by this young victim and offered support and assistance, beyond their professional responsibility, in order to help the young victim deal with the event in a manner which would not further victimize her. (CS89-136)

Teenager regrets abuse allegations

An 18-year-old complained that the Ministry refused to support her application to leave her foster home and move back in with her parents. She had been placed in the foster home after claiming that her stepfather had sexually abused her. Now she regretted making the allegation and wanted to testify on her stepfather's behalf at his upcoming criminal prosecution.

The young woman's social worker told us that she frequently changed her mind about what she wanted. The young woman was doing well in school and was working towards completion of grade 12, and in view of the gravity of the allegations of abuse, the social worker was reluctant to support a move home.

The complainant told us she appreciated the reasons for her social worker's concerns. We encouraged her to meet with the social worker, and it was agreed that together they would meet with her parents to assess the situation.

Some time later, the young woman called us to thank us for our assistance. She had been to court the previous week and was now back at home with her parents. (CS89-137)

Runaway from Ontario finds happy home in B.C.

A woman contacted our office to seek assis-

tance in dealing with a situation that involved a 16-year-old youth. The woman told us she had taken the young woman into her home as she had nowhere to go after moving to B.C. from Ontario, where she had had serious family problems and had been involved in the street scene.

We spoke to the youth about her request to remain with the complainant. She told us that she had found a good home in B.C. and was doing much better here.

We contacted the Ministry's District Supervisor, who agreed to look into the matter. In the meantime, the youth acquired employment and was paying her own room and board as it was too late in the year to enroll in school. As an alternative, the Ministry agreed to consider providing financial assistance to the complainant so that the youth could return to school in September if her living arrangements remained stable. This resolved the complainant's concerns about a long-term plan for the youth.

The Ministry also offered to help the youth return to Ontario and establish contact with services that could help her resolve issues concerning her there. The complainant had contacted the youth's mother and stepfather to let them know where she was living. However, as the youth had refused to return to Ontario, there was little that could be done to deal with the dynamics in her own family. (CS89-138)

Mother fears breach of confidentiality

The maintenance of confidentiality in child abuse investigations is of utmost importance. Given the community's abhorrence of such abuse, there is great potential for needless harm to be caused by rumours.

During the course of an investigation by the Ministry of an allegation that a father had sexually abused his five-year-old daughter, the child's mother asked the Ministry to transfer its investigation to a different district office. Believing that a friend of the father worked in the investigating office, she was concerned that a breach of confidentiality might take place.

When the Ministry failed to act on her request, the mother complained to us. We spoke to the District Supervisor and Area Manager, who said that they had reviewed the complainant's concerns and were satisfied that the investigation was being carried out in a professional manner. They confirmed that a friend of the child's father worked in the same building as the investigating social worker but not on the same team. Concerns were expressed about changing personnel in the midst of an investigation.

On giving the matter a second look, the Area Manager decided to transfer the case to a different office in another area so that the appearance of objectivity and confidentiality could be maintained. This resolved the concerns of the complainant. (CS89-139)

Services to Children in Care

Second foster home provides happy compromise

A 16-year-old permanent ward of the Ministry told us she had left her foster home of eight years because her foster parents had accused her of being pregnant. The charge, she said, was untrue. She wanted to live on her own, but the Ministry refused to grant her financial assistance.

The young woman's social worker told us he would "dearly love" to get the girl back into her foster home as it seemed to have been an excellent placement and he wasn't sure she was ready to live on her own. She had been sexually abused by her mother and several step-fathers and was in treatment with a psychologist.

We asked the social worker if alternatives could be presented to the girl that might be more acceptable to her. He agreed to reconsider her request for independent living when she turned 17 and, in the meantime, to explore other placement options with her. This was done, and when we checked back later with the social worker, he told us the young woman had agreed to move into a different foster home where she had an apprenticeship opportunity. The social worker said that she was happy with the placement and that it was working out well. (CS89-140)

Best friend's family becomes foster home

We received a letter from a woman who was

writing on behalf of a 16-year-old youth. The youth, a ward of the Ministry of Social Services and Housing for some time, had left the group home, where he had resided for the past year, to live with his best friend's family.

In the course of our investigation the youth informed us that he was unhappy living in the group home and wanted to live in a family environment. We spoke with the family and learned that they had requested financial assistance from the Ministry. The Ministry had informed them that financial assistance would not be available, as the youth could return to the group home — a Ministry-approved resource.

We contacted the District Supervisor of the Ministry office responsible for the youth's care. The District Supervisor agreed to assess the home as a possible foster placement on condition that the youth return to a Ministry resource in the interim. The youth agreed to do this, and the home was subsequently approved as a restricted foster home. A follow-up call to the youth confirmed that he had returned to the family residence and was very happy there. The family was receiving financial assistance for the youth's care on a restricted foster home basis.

It is our position that a youth has the right to participate and have his views considered in the case planning process. (CS89-141)

Teenager prefers independent living

Sometimes a youth and her guardian have differing views regarding the youth's best interest. A 16-year-old ward of the Superintendent of Family and Child Services experienced temporary independence when she got a job and was able to live on her own and manage her own finances. When her job was terminated, she asked the Ministry to provide her with independent living assistance to pay her rent and cover other costs.

In light of her age and the brevity of the young woman's working experience, her social worker was concerned about her ability to manage on her own and was not willing to approve an independent living situation. Instead, she offered the young woman a place in a foster home. Confident that she had the maturity to live independently, the young woman declined the social worker's offer, and neither was able to convince the other of the merits of her position.

The young woman asked us if we could facilitate a resolution to the dilemma. We encouraged her to meet with the social worker again to discuss their common goal, which was for the young woman to succeed in independent living with whatever supports were necessary. The conflict was resolved with a mutual agreement that the young woman would be referred to a semi-independent living program with minimal supervision so that her level of maturity could be assessed to determine whether or not she was capable of living on her own. (CS89-142)

Youth worker questions quality of group home care

A youth care worker told us she had grave concerns about the quality of care being provided to special needs youth in a local group home. She was afraid to identify herself, fearing that her criticisms might be taken the wrong way by Ministry officials and jeopardize her future employment opportunities. However, she was prepared to have us discuss her general concerns with Ministry officials responsible for this contracted resource, providing we didn't name her.

The District Supervisor told us he shared many of the complainant's concerns, particularly with regard to the low skill level of many staff who were hired in this contracted group home. He said that while he had been impressed with efforts to provide competent service in the group home, the number of referrals to the home of disturbed youth underlined the need for a greater emphasis on staff training and the hiring of properly qualified staff. The problem had already been addressed, in part, through a submission for increased funding for the contracted resource, which the supervisor hoped would be approved in the next round of contract negotiations, depending upon Ministry budget allocations.

The complainant was reassured to hear that Ministry officials shared many of her concerns and were working, within available resources, to remedy the situation. (CS89-143)

Home for pregnant teenager hard to find

A 15-year-old youth, almost nine months pregnant, complained that the Ministry was not providing her current caregiver with financial support to look after her. The youth was in care by agreement between the Ministry and her uncle, who was her legal guardian. She said she had found her present home on her own, as she hadn't liked previous foster homes chosen by the Ministry. She could not return to live with her uncle, she said.

The Ministry's social worker described concerns about the place the youth lived and said it appeared she would be better cared for in an approved Ministry foster home. A placement in a group home for pregnant teens had been offered to the girl, but she had refused because it was "too institutional". The social worker also acknowledged that resources for special needs teens were scarce, and he was concerned that she might be driven to "working the streets".

We encouraged the girl to continue to talk to the social worker about her options. She did, and in due course he convinced her to move into an approved special-care foster home, where she continued to reside after her baby was born. (CS89-144)

Group home resident seeks relocation near parents

A 15-year-old who was constantly in friction with his parents moved to a group home as a result of an agreement between his parents and the Ministry. When his parents moved from the interior to the lower mainland, he asked to be transferred to a group home close enough to them to make visits possible.

The Ministry social worker told us he thought a transfer would be a good idea, but requests to the Ministry's lower mainland region to find such a resource had led to delays because of complications in planning between two Ministry regions. Ministry officials acknowledged a scarcity of resources for special-needs youth. Lower mainland officials suggested the youth move back in with his parents, but the level of friction in the family appeared to make such a resolution impractical. The youth's behaviour had noticeably deteriorated since his parents had moved.

Staff at the group home where the boy was living told us the boy was not ready to move back with his parents. He had been making good progress until his parents moved away, they reported, but intensive family counselling was required before any reunion with his family could be considered as an option.

We relayed these concerns to Ministry staff in the lower mainland region. Their attempts to address the issue had been further delayed by the fact that the parents had missed an appointment to meet with a social worker to discuss transfer plans for the youth. However, agreement was finally reached on an inter-regional plan under which the youth would return to his parents' home for a brief visit, by which time a placement in a lower mainland group home would be available. The youth was very pleased when informed of this plan. Group home staff described him as being "in seventh heaven" when he left for the lower mainland. (CS89-145)

Boy's return to mother worries grandmother

A woman told us that her seven-year-old grandson was to be deported to the United States in a day or two. She said that the child had been living with her but the Ministry planned to return him to the care of his mother - a U.S. resident. The grandmother felt that this would be disruptive for the child's schooling and might place the child at risk because the child's mother and stepfather would not properly care for him. She informed us that the Ministry had apprehended the child a few days earlier and had placed him with her on a restricted foster home basis.

Ministry staff informed us that the child had been apprehended when his parents left him with his grandmother overnight and did not return the following day to pick him up. The Ministry stated that they were investigating the allegations that the child had been abused and neglected. The social worker said a hearing date had been set for a court appearance and the child would not be deported prior to the court appearance.

We informed the complainant of the arrangements and encouraged her to contact legal aid to arrange for legal representation. As the only lawyer practising in her community was acting for the Ministry, we contacted the government agent, who agreed to provide a telephone for the complainant to use to establish contact with a lawyer.

We subsequently confirmed that the child had remained with his grandmother until he finished the school year. During this period arrangements were made for the child to return to his parents when the protection concerns were resolved.

We were able to resolve the complainant's concerns by providing information and access to legal aid. Although we do not have the jurisdiction to intervene in court matters, we can provide complainants with information about the court process and clarify the role of the Ministry in carrying out a protection investigation. (CS89-146)

Mother opposes IA for daughter

The mother of a 17-year-old youth complained that her daughter's application to the Ministry for income assistance had been accepted. She felt that this undermined her efforts to force the child to return home to live.

We contacted Ministry officials about the woman's concerns. The District Supervisor informed us that the Ministry had conducted an assessment of the situation prior to approving income assistance. Based on the information available, the Ministry believed that it was in the child's best interests to approve her application for income assistance. We informed the youth's parents that we were satisfied that the Ministry had properly investigated the matter and made its decision in accordance with policy guidelines.

Parents frequently contact our office requesting assistance in dealing with youths who have run away from home or are refusing to comply with the rules in the home. It is our position that the Ministry should assist in the re-unification of families by providing services or referrals to appropriate resources such as counselling agencies. However, there are situations where the youth is best supported outside of the home environment. In these cases a thorough social assessment is necessary to determine if the youth should return home or to identify the services required to assist the youth in achieving independence.

We believe that Ministry staff should be able to exercise professional judgement in this area, providing that the principles of administrative fairness are applied — all parties should have input into the decision, reasons for the decision should be clearly stated, and the individual should have the right to appeal the matter within the administrative structure and/or to an independent authority. (CS89-147)

Adoption

A long wait for an adoption

To families anticipating the arrival of an adopted child, the waiting period often seems unreasonably long. A family who applied to the Ministry of Social Services and Housing to adopt a child were told that there were few newborns available for adoption in British Columbia. The couple had been touched by publicity about the plight of infants and children in war-torn Third World countries. With the assistance of their social worker, the couple applied for international adoption, placing their name on the waiting list for an infant from their country of choice. A home study was completed and the waiting period began.

Later the couple was informed that the country had closed its borders to adoptions. The couple repeated the process of placing their names at the bottom of the waiting list for another country. After waiting several months, they heard that there were infants from yet another country in dire need of adoptive homes. They changed their request to this new country of choice and their application was placed at the bottom of its list.

Frustrated with the delay, the couple contended that their application should not have gone to the bottom of the list when they changed the country of choice. A fairer process, they said, would have used the date of their original application to determine where their names were placed on the list. They asked us to consider the reasonableness of the Ministry's policy.

The Ministry's policy for international adoptions requires that adoptive parents select one country of choice. In addition to conditions for adoption established in British Columbia, each country of choice determines its own requirements and conditions of adoptions. A significant criterion established by both the Ministry of Social Services and Housing and each country is an assurance that the adoptive parents have an appreciation of the culture and language of the country from which they have applied to adopt a child. The purpose of the requirement is to ensure that adoptive families have clearly chosen to provide a home for a child from another country with an understanding and appreciation of that child's cultural heritage.

We found the Ministry's policy to be reasonable. Its awareness of the frustrations experienced by parents waiting to adopt children was balanced by its sense of responsibility for ensuring that appropriate steps were taken to guarantee the readiness of the parents to fulfil that role to the best of their ability. The policy of placing each application at the end of the waiting list facilitates an orderly process that discourages applicants from switching their choice of country without careful preparation and from "bumping" other adoptive parents who have worked their way up a list. (CS89-148)

Brothers separated by adoption assured of continuing contact

A woman expressed concern that the Ministry's plan for the adoption of her grandchild might prevent ongoing contact between the boy and his older brother, who lived with her. She supported the adoption but wanted to ensure that the brothers would be able to stay in touch.

We discussed the complainant's concern with Ministry staff involved in providing services to the family. The social worker informed us that the family that was planning to adopt the child was willing to permit contact between the brothers. However, they had requested specific guidelines to spell out conditions for access by the boy's older brother.

We informed the complainant of the proposed arrangement and explained that there were no legal grounds to guarantee continued visiting access after the adoption had taken place. She felt that the grandson in her care would understand this and that it would resolve some of his concerns.

The social worker subsequently informed us that an agreement had been reached regarding visits. A letter spelling out the conditions had been placed on the older boy's file and the adoption process had been finalized.

The Adoption Act does not make provisions regarding the special needs of siblings. The Act is designed to ensure confidentiality and to wipe out identifying information included in the child's history up to the time of adoption. Older children, at the time of adoption, may have established relationships with members of their natural family and may wish to maintain contact. In this particular situation the Ministry went as far as it could to ensure continuing contact between the brothers. (CS89-149)

Adoptee searches for natural mother

A woman who had been adopted as a child complained that the Ministry had denied her request for information about her birth mother. She also wanted information about her parents' medical history.

We informed the complainant that British Columbia's Adoption Act was revised in 1987 to establish a voluntary adoption reunion registry. A Ministry of Health brochure states that "the primary purpose of the registry is to re-unite persons who have been adopted in British Columbia with their birth parents, if both parties request the event." Persons 19 years of age or older who were adopted in British Columbia or are the natural parents of persons adopted in British Columbia can register if the adoptee is at least 19 years old. Registration forms can be obtained from the Vital Statistics Division of the Ministry of Health or from any office of the Ministry of Social Services and Housing. Applications with a certified cheque or money order for $25, payable to the Minister of Finance, are forwarded to the Ministry of Health, Adoption Reunion Registry, Division of Vital Statistics, 1515 Blanshard Street, Victoria, B.C. V8W 3C8. The envelope should be marked "Confidential".

Although this process may facilitate the

reunion of voluntary applicants, it does not address the question of access to information. In addition to informing the complainant of other avenues she might pursue in trying to locate her birth mother, we described the procedure for requesting information about her medical history.

At the time of the complaint, requests for medical histories were taking approximately a year to process, although medical histories required for urgent medical purposes are given priority in processing.

We explained that the procedure for obtaining the release of urgently needed medical information required the adoptee's doctor to write to the Ministry stating that the information is required for medical purposes and providing reasons — for example, the patient shows symptoms of a disease that may be hereditary and cannot be diagnosed with certainty in the absence of such information.

The issue becomes more complicated when, for example, an adoptee requires a bone marrow transplant that may be available only from a relative. The Superintendent of Family and Child Services will review each case in consultation with a medical professional and, if appropriate, may decide to contact a member of the birth family, who would then have to decide whether or not to participate in medical tests that in some cases could result in his or her identity being revealed.

Although establishment of the adoption reunion registry was a major step forward, adult adoptees and birth parents continue to contact us to complain about the difficulties they experience in locating birth relatives and acquiring information about their past, and we do our best to provide as much information as possible about available processes. (CS89-150)

Three children, no birth certificates

A man told us that he and his wife had adopted three children from the same family approximately two years ago. No birth certificates for the children had been received. This puzzled the complainant, as he thought the $100 fee he had paid when he filled out the adoption papers was for the cost of birth certificates.

We informed the Ministry's adoption section of the complainant's concerns. They agreed to investigate the matter and found that the complainants had been charged in error for the court fees. The Ministry refunded the $100 and arranged for provision of the birth certificate of the child born in B.C. and for payment for processing certificates for the other two children, born in Alberta. The Ministry told the parents that it would pay the $20 fee for each of these two children, since this is a service offered free to British Columbia parents adopting children born here.

The complainants were satisfied with this quick resolution by the Ministry's adoption section. (CS89-151)

Man re-united with adopted son

A man called us to complain that he was not receiving adequate assistance from the Ministry in re-establishing communication with his former adopted son.

Many years ago, the complainant's family had adopted the boy from a Third World country. After four years, problems related to discipline arose which resulted in the boy being made a permanent ward of the Ministry. The boy and the complainant had no further communication until, at the age of 17, the boy made contact with him and expressed a wish for it to continue.

The complainant told us that when he called the Ministry to arrange a meeting to discuss the boy's progress and make plans for future contacts between the boy and his former adoptive family, the social worker was "cool and non-communicative" and told him that information about the boy's progress was confidential. The complainant recognized that he no longer had any legal rights as a parent, but felt it might be in the boy's best interests to re-establish communication with his former adoptive family. The family wanted to support the boy's outreach and also be updated as to his current situation.

After we contacted the Ministry, the District Supervisor agreed to review the concerns raised by the complainant. The boy confirmed his wish to have contact with his former adoptive family, and a meeting was arranged between the social worker, the boy and his former adoptive parents to discuss his current situation and to plan the nature of future contact between them.

Thus the communication channels were opened, and the complainant was satisfied with the resolution. (CS89-152)

Cross–ministry Issues

Caught in the cracks between Ministries

The combination of a shortage of residential resources and divided responsibilities among Ministries helping children with different needs sometimes results in special needs children "falling through the cracks" — a problem discussed in our 1988 annual report.

The mother of a 15-year-old boy with psychiatric and behavioural problems was at her wits' end after he was sent home from a mental health facility funded by the Ministry of Health. At the time she called us, he had moved to a short-term youth shelter whose staff said they were poorly equipped to meet his needs.

Social Services and Housing ministry officials told us they had no appropriate placement available for the boy because of his mental health problems. They agreed, however, to provide temporary support from a child care worker so he could return to his mother's home pending inter-agency discussions about a solution. The mother reluctantly agreed, while expressing her worry about the safety of her three younger children, given her son's erratic behaviour.

The mental health facility where the youth had previously been placed agreed to take him back into the "response unit" as long as parental consent was obtained for necessary medical treatment. This was agreed to, and we then attended an inter-agency meeting to discuss options for a more permanent placement. Social Services and Housing officials took the position that the youth was in need of psychiatric treatment and was not in need of protection by their Ministry. They felt that a mental health placement was most appropriate.

The youth's mother was adamant that he could not return home at this time, but a Social Services and Housing group home placement was not available. Asked if she was prepared to "abandon" the youth by refusing to take him in, she said she would if it was the only way of producing swift action in finding a suitable resource for him. The professionals present at the meeting acknowledged that a "resource gap" existed in the community for youths with psychiatric behavioural problems.

The mental health treatment centre staff agreed to extend the youth's stay, as no resource had yet been found. They expressed concerns, however, that a prolonged stay in an institutional setting was not in his clinical best interests.

In due course, the Ministry of Health agreed to place the youth in a mental health group home, although concerns were raised about his behavioural problems not being well-suited to this facility. We closed our file as resolved — but only temporarily.

A couple of months later we again received a call from the youth's mother. The youth's placement in the group home had fallen through, and he was now facing charges of car theft and possession of stolen property. As he was soon to be 16, was not medically certifiable under the Mental Health Act, and was not likely to consent to treatment, a mental health facility was no longer considered to be an option. The mother reiterated her concerns for the youth's younger siblings and stated that a return home was not an option. She said she was afraid her son would be dead before a suitable placement was developed.

Seven months after the initial complaint, a Ministry of Social Services and Housing special care home was found for the youth, and he was signed into that Ministry's care by agreement with the mother. When we closed our file, the youth's mother expressed serious concern about the way in which the system responded to her son's needs, but was generally optimistic that the current plan would be responsive to the special needs of her son. (CS89-153)

Mixup over Ministry responsibilities hampers abuse investigation

When responsibilities of service providers in different bureaucracies are closely related and overlap, rivalries and misinterpretations of roles may easily occur. Hence the importance of well-defined and efficiently administered protocols among agencies that may be jointly involved in assisting persons in need.

A woman told us her son's 15-year-old girlfriend had reported being sexually abused by her father. The girl was in hospital for treatment of a drug overdose, and the caller was worried that her allegations were not being properly investigated.

We explained that the Ministry's investigations of child abuse allegations are confidential and that she could not have access to information regarding the nature of the investigation. We agreed, however, to satisfy ourselves that an appropriate investigation was under way.

Preliminary inquiries indicated that hospital staff and mental health workers were also involved with the girl, and tension evidently existed as a result of conflicting perceptions about their roles and those of Ministry social workers. Apparently the woman who called us had also spoken to a mental health worker, and there had been a delay notifying the Ministry of Social Services and Housing, which had official responsibility for investigating such complaints. The mental health worker, who was a part-time employee, told us the delay was a result of the fact that her phone calls to the Ministry were not returned.

The Ministry's investigating social worker said she had attempted to return the calls. She explained her responsibilities under the Family and Child Service Act, as the mental health worker did not want her to interview the girl. The mental health worker believed that she was in a better position to obtain a full disclosure from the girl, who was coming to trust her. In fact, no clear allegation of sexual abuse had yet been made by the girl, although past Ministry involvement had indicated concerns about physical abuse.

We established that inter-Ministry protocols existed among the hospital, Mental Health, and the Ministry of Social Services and Housing. The hospital had a protocol committee to assist in coordinating child abuse investigations. The Ministry's District Supervisor and the mental health centre director both agreed that a review of existing protocols should take place and that inter-Ministry protocols already in existence needed to be reinforced to ensure that separate responsibilities were made clear and communication of abuse allegations ensured. The District Supervisor later told us that the review had resolved mutual concerns and that the problems arising in the case brought to our attention had been the result of procedural error rather than policy shortcomings. (CS89-154)

Custody disputes and sex abuse allegations: a dilemma for courts, government and children

In matters involving child custody and access disputes where allegations of child abuse are made, we are frequently obliged to discontinue investigations without fully resolving the concerns of a parent who complains to us about the actions or omissions of the Ministry of Social Services and Housing.

The Ministry of Social Services and Housing may become involved when one parent claims that the other has abused the child. A family court counsellor from the Corrections Branch of the Ministry of Solicitor General may also be assigned to prepare a custody and access report for the court. In some cases, Ministry and police investigations result in a belief that an allegation is substantiated, but no criminal charge is laid because of the high burden of proof required and because of the absence of witnesses other than the child, who may not be viewed as a competent witness.

The Ministry may conclude that a child has been abused by one parent but is not in need of protection pursuant to the Family and Child Service Act because the custodial parent is adequately protecting the child. However, the Ministry is faced with a dilemma if it concludes that access should be withheld from an allegedly abusive parent who holds that right of access by virtue of a court order.

Some complainants to our office claim that the Ministry should vigorously support a custodial parent in a custody or access dispute. Traditionally, the Ministry ends its involvement if it believes that the "non-offending" parent is effectively protecting the child, even when Ministry social workers officials believe that the child has been abused by the other parent. Ministry officials have cited to us their discomfort in becoming embroiled in custody/access disputes, saying they prefer to leave such matters to be decided by the courts according to the provisions of the Family Relations Act.

This practice is sometimes questioned by a parent who alleges abuse by the other parent and when the Ministry has strong suspicions that abuse has taken place but lacks "hard evidence".

The following summaries exemplify the types of complaints brought to our attention with respect to the Ministry's handling of allegations regarding parental abuse when a custody dispute exists.

Clinical professionals whose assessments of children have led them to conclude abuse has occurred have expressed concerns to us that the current system is sometimes inadequate in addressing the issue of the long-term protection of a child.

In one such case a psychologist called us because she was concerned for the safety of an eight-year-old girl who was in treatment with her. The psychologist, along with Ministry social workers and other professionals, believed that the child had been sexually abused by her father and that she would be at risk if allowed unsupervised access to her father.

The girl's mother, in violating a court order by withholding access to the father, was supported by professionals who considered her action a necessary measure for the child's protection. According to the psychologist, the alleged sexual abuse had occurred two years earlier, and the girl was "naturally" suppressing the events. She had originally disclosed the abuse to a police officer whom she seemed to trust. The officer had subsequently left the area, and a criminal prosecution was not seen to be a realistic option. The father said that the story was fabricated and suggested that the girl's mother was prompting her to make the allegations.

Our preliminary inquiries indicated that Ministry and Mental Health officials had acted in a thorough and professional manner in carrying out their respective responsibilities. According to the police, the father had taken and passed a polygraph test. It appeared that the matter would have to be decided by a court, as a mediated settlement between the parents was clearly not an option.

We were only able to assist to the extent that the RCMP arranged to have the original investigating officer re-interview the girl. The girl's parents and psychologist believed that further disclosure details might be forthcoming, given the child's trust in this officer. A Family Advocate may be appointed by the Ministry of Attorney General to represent a child's viewpoint to the court when there is disagreement between the parents regarding her best interests. None was appointed in this case.

The judge rejected "outright" the conclusions of professionals in this case while being mindful of "the view of some professionals in the field, perhaps not entirely unjustified, that judges, like many people untrained in the area of child sexual abuse, are upset by incest and insist on pretending that it does not exist." The polygraph test taken by the child's father was cited by the judge in his reasons for ordering unsupervised access to her father with the hope that it would be expanded in the future by consent of the parents.

In a case similar to the previous one, the mother of two young children complained to us that the system was not acting to protect her children. Her four-year-old daughter had claimed to have been sexually abused by her father and was reported to be "sexually acting out" in school.

Ministry officials, based on their investigation and supported by clinical assessments, believed the child's story. They concluded that she would be at risk if allowed unsupervised access to her father, but as the mother was preventing that access from taking place, they did not view the child as being in need of protective intervention on the part of the Ministry.

The court hearing an application under the Family Relations Act appointed a family court counsellor to prepare a report. He found such a high level of acrimony between the parents — involving allegations and counter-allegations — that he asked the court to excuse him from making a report, believing it would not be helpful. A Family Advocate was not appointed by the Ministry of Attorney General to represent the children's viewpoints.

The extent of our ability to assist in this case was limited to an agreement with Ministry officials that a social worker who had originally

investigated and since left the Ministry would have access to her notes from Ministry files to assist her in her court testimony.

The court eventually awarded the father custody of his children, and the decision was appealed.

The Ombudsman has no jurisdiction to review court decisions, and our purpose in reporting the above cases is not to second-guess judges' orders. Judges, Ministry officials and family court counsellors are often caught in no-win situations in striving to assess children's best interests when the polarized viewpoints presented by acrimonious parents makes the assessment of the truth of child abuse allegations a most difficult task. All too often the courts are left to assign "winners" and "losers" rather than to promote lasting and consensual resolutions in the best interests of children.

Creative and innovative responses to reduce the vulnerability of children may include:

1. Increased access to the Family (Child) Advocates whose role it is to independently represent a child's views to the Court when parental views conflict and particularly when an allegation of abuse has been made by one parent against the other.
2. Increased emphasis on professional mediation — including court-ordered mediation — to seek consensual resolutions.
3. Continuing efforts to integrate inter-disciplinary, cross-agency assessment and reporting activities, including joined Family and Child Service Act and Family Relations Act hearings.
4. Ensured availability of experts in the field of child abuse to be consulted and heard in custody, access and maintenance disputes in the courts.
5. A more active role for specialized child welfare professionals in matters involving custody and access disputes where allegations of abuse and neglect are made.
6. A continuing emphasis on training for lawyers, judges and other court officials in matters involving child protection concerns. (CS89-155)

Finding a home for a young offender

A distraught mother of a 14-year-old youth called our office on a Friday afternoon to say her son had been charged with an offence and was in custody. His probation order prohibited him from returning home until he had successfully completed a treatment program. The youth was to be released from custody on the following Monday morning, and the effect of the probation order was that he had no place to live.

The caller told us she had been informed by a social worker that if her son returned home, his siblings would be at risk and the Ministry would be forced to apprehend them. The Ministry had also told her that her son was not in need of protection and that the Ministry did not have a mandate to provide a residence to young offenders. Consequently, the mother turned to our office to help her resolve the dilemma.

Our first concern was to have the social worker, the probation officer, the psychiatrist providing treatment and the mother meet to plan for the youth. The outcome of that meeting was a voluntary care agreement between the boy's mother and the Ministry with arrangements for the boy to be placed in a group home with older adolescents. It was also agreed that regular meetings among all parties involved would be important to discuss the ongoing needs of this young offender.

The complainant was satisfied that services to her son were being planned and developed cooperatively by both ministries. It was important for her to be part of the planning process, as she was committed to the recovery and return of her son while still wanting to protect his younger siblings from his threatening behaviour. The youth's social worker was able to develop a more positive relationship with the boy's mother. In addition, the professionals providing services benefited from shared information and planning. This office commends the efforts of the social worker and probation officer for their response to the needs of this family in acknowledging a cross-ministerial responsibility. (CS89-156)

Home Mortgage Branch

Fast relief for mortgage applicant

A man applied for a B.C. second mortgage to purchase a family home. Before the papers were drawn up for him to sign, he was called away to work up north on an ice-breaker. When he came home for Christmas, he signed the papers as required, only to be informed by the Home Mortgage Branch that a backlog would result in a five-week delay in the consideration of his application. When he approached us, the five-week period was almost up, but the matter was still not settled, and in the meantime he and his wife had been paying interest to their bank for interim financing. He was scheduled to leave again shortly to go back up north, and he was concerned that his mortgage application would remain in limbo until he had to leave.

The Home Mortgage Branch, on receiving our call, immediately got in touch with the complainant's bank, issued the necessary documents, and invited the complainant to come in to sign the papers. All this was done in a matter of hours. Although the initial delay had been lengthy, both the complainant and our office appreciated the fast and efficient response provided by the branch. (CS89-157)

B.C. Housing Management Commission

Resolved	25
Not resolved	-
Abandoned, withdrawn, nonjurisdictional	2
Not substantiated	12
Declined, discontinued	2
Inquiries	1
Total number of cases closed	42
Number of cases open December 31, 1989	5

The general theme of 1989 complaints was that people wait too long to be housed. Calls came from people paying more than half their incomes on rent and from others having to use the "support" (food, etc.) portion of their income assistance to pay rent. The unfortunate reality is that the Commission's ability to house is finite: with rents increasing in the urban areas, more people are in difficulties and the best the Commission can do is to ensure it can assess whose need is greatest. This means that many must wait for periods up to several years, and our best efforts to explain why we think the Commission is acting correctly are cold comfort to such people. (CS89-158)

Low-income person objects to rent disparities

The mandate of the B.C. Housing Management Commission — to provide affordable housing — is achieved by charging rent related to each tenant's income. The rule is that 30 percent of gross household income (less some exemptions, such as money earned by children doing paper routes) is charged for rent, up to maximum amount, reflecting the value of the unit on the private rental market. There are also minimum rents charged if the tenant is on income assistance. This means that tenants in the same building pay very different amounts, which results in confusion for some people.

One woman called us to say it was not fair that her rent ($347) was so much more than it would be if the family was on income assistance, in which case, she said, her rent would be only $159. She thought she was left with less in her hands than she would have on income assistance and that this was unfair to low-income earners.

We reviewed the Commission's complex formulas for calculating rents, comparing the rents charged to families on income assistance with those paid by people on UIC, pensions, etc. Although the calculation methods are different, we were satisfied that the policy does not have the effect of discriminating against low-income earners. At all family sizes a low-income family paying 30 percent of its income as rent is left with more "disposable" income than a family of the same size receiving income assistance. (CS89-159)

No patience with profligates

Many people waiting for housing subsidies are unhappy with the Commission's policies. As well as disliking the long waits, people want to be sure that they are being treated fairly and that others are not jumping the queue. One man was particularly incensed to discover that the Commission housed people he felt were profligate, and hence the authors of their own misfortune, while he waited. He felt that his own responsibility and careful management of limited resources were the very reason he was not offered housing.

This was a difficult issue to address, because at a basic level the man was correct. With the exception of imposing a "wait" period for applicants who have been evicted for such causes as damage or failure to pay rent, the Commission does not consider an applicant's lifestyle choices or value systems in reviewing applications. This means that a family renting expensive accommodation in downtown Vancouver is further up the list than a family of the same income paying less rent out in the suburbs. One could argue that the second household is making more responsible decisions, but we must support the Commission's position that it should not and cannot judge these factors. Lifestyle choices are affected by many factors, such as cultural origin and ability to function, and the Commission has no right to "judge" such choices. What it must do is define objective, quantifiable measures of current need and offer housing on that basis and without discrimination. We told our caller that we support this interpretation of the Commission's mandate. (CS89-160)

Ministry of Solicitor General

Resolved	464
Not resolved	-
Abandoned, withdrawn, nonjurisdictional	100
Not substantiated	442
Declined, discontinued	514
Inquiries	75
Total number of cases closed	1595
Number of cases open December 31, 1989	182

B.C. Coroner's Service

The right to know vs. the right to privacy

A TV station complained to us about the B.C. Coroner's ban on publication of a name at an inquest. The name sought by the station was that of a youth who had made an accusation of sexual assault against a man who later committed suicide. The station's lawyers put forward a vigorous argument that the public had a right to know such information and that the ban represented a dangerous encroachment on the freedom of the press.

The Coroner had made the order under the authority given him by the Coroners Act to "make the orders or give the directions at an inquest he considers necessary to maintain order and to prevent abuse of the inquest process". He told us that he considered it to be in the best interest of the youth not to be named. We concluded that his decision was proper and based on reasonable criteria. The public right to know must be balanced against the individual's right to privacy, the protection of which must be especially guarded when the individual has the vulnerability of a child. (CS89-161)

Corrections Branch

Continuing Concerns - Grievances

Although most Directors of local institutions have become accustomed to and comfortable with our presence over the years and have learned to work co-operatively and effectively with us in solving the problems residents raise during our visits, we do hear the question posed by more than one perplexed senior official, "Why don't the inmates come to us first with a problem?" The answer to that question is complicated.

In 1986-87 our office made a study of inmate awareness of and use of the internal grievance procedure. We found that an adequate grievance procedure was provided by the Correctional Centre Rules and Regulations. However, the necessary tools for accessing that system were frequently lacking.

We found that in many instances staff did not openly encourage inmates coming to them with grievances. Some staff took a complaint against some aspect of the centre's operation as a personal affront and responded emotionally. Some staff would advise the inmate that if they did not like the situation, they should call the Ombudsman or the Inspection and Standards Division of the Corrections Branch; but when this is done in the first instance, it is simply an avoidance of staff responsibility.

Perceiving an unwelcoming attitude to their concerns, inmates may fear that they will be subject to retribution if they complain. Some fear that they will become labelled as whiners and may suddenly find themselves transferred to another centre in some far-flung region against their will; or, if they hope to move to a forest camp or Community Correctional Centre, that they may find the transfer denied. Others feel they may lose favourable recommendations for temporary absences or parole applications.

It is this uncertainty about how the system will treat their grievance, often reinforced by the real or imagined experience of some who have tried to use the system, that often causes the inmate to resort quickly to an outside agency such as the Ombudsman's office or Inspection and Standards.

Other inmates are simply unaware of the right they have to make a complaint to the prison's Director. Others have gone that route and then were disappointed when the complaint was handled by a different officer. The Correctional Centre Rules and Regulations provide that a Director may delegate responsibility for responding to an inmate complaint, but it is important

that this delegation be explained to the inmate and that the process remain under the general supervision of the Director.

This year the Corrections Branch confirmed its intention to adopt our office's recommendation of a provincial grievance form that will help eliminate many of the uncertainties that currently exist in the grievance process. We are pleased to see its development, as it will ensure that an attempt has been made to resolve grievances internally at the institution before the Ombudsman receives them.

Future institutional visits may include an auditing of the inmate grievance procedure and its effectiveness. At this time, a number of centres provide our office with regular updates from their meetings with representative groups of inmates. We encourage Directors to take this open and positive approach to the role of grievance handling in the prison. To that end, and in anticipation of the new provincial grievance form, we offer the following suggestions to Directors to encourage better communication in the grievance process.

1. Ensure that staff training emphasizes an open, non-hostile attitude toward complaints.
2. Clearly communicate to inmates through posted memos, or through tier, dorm or representative meetings with inmates, that the Director is interested in and sincerely wants to deal with issues at the initial stages.
3. Deal effectively with staff who fail to follow the provisions of the regulations with respect to the complaint process.
4. Adopt the use of the provincial form that we expect to be produced in 1990.
5. Involve inmates in peer training about their grievance rights and procedures as inmates often "hear" better when spoken to by inmates.
6. Encourage life-skills courses that enable inmates to deal more effectively with their perceived grievances.
7. Ensure that the Director's responses to grievances are posted and adhered to in the centre.

Remission Forms

This past year we proposed that the monthly assessment of earned remission notice an inmate receives should also instruct the inmate about the steps to take if he wants to request a review of the assessment. The Correctional Centre Rules and Regulations provide that such an appeal may be made within seven days to the District Director. The Corrections Branch agreed with our proposal. The Corrections Branch has a general view that administrative decisions should be subject to review. A person who does not know or remember what the Correctional Centre Rules and Regulations say is unable to direct his request to the proper person. The addition of the information to the form will improve administrative fairness in the operation of the remission system and should direct the complainant to the proper person initially.

Youth Issues

Smoking will not disappear as a leading issue in young offender centres. Vandalism, bullying and smuggling have become the key activities marking frustrated youths' search for that elusive cigarette. The complaint arises each time we visit a centre: "When will we get our smokes back?" Some youth had raised the intriguing question — why does the ban extend only to youth centres? The one silver lining in this cloud is that interest in forms of contraband other than tobacco seems to have dropped markedly.

It strikes us that this is one issue that will not go away because the Corrections Branch will constantly experience an influx of youth who are accustomed to smoking. Nevertheless, the Branch's arguments for better health and compliance with the Tobacco Restraint Act are commendable.

We sense a drop in the number of complaints reaching us from some youth centres. The immensely complex and troubling issue of self-harm incidents, particularly at the Willingdon Youth Detention Centre, is dealt with in the Introduction to this report.

Outreach

We learned of one Oakalla Correctional Officer who advised a university tour group that every complaint made by an inmate to the Ombudsman was decided in favour of the complainant. Such is decidedly not the case. Roughly a third of the complaints we receive

involving the correctional system are found to be not substantiated. About one-third are supported in varying degrees, and the remaining third would be referred back to the Corrections Branch for internal review.

Such a misinformed opinion as this officer had clearly underscores the need for our office to reach line staff and help them become more aware of the role we play in institutions. A few years ago we were able to do this to a greater extent when we were involved in the Correction Branch's Block 2-4 training at the Justice Institute. Shortening of the course eliminated the session we presented to new staff on the history and the role of the Ombudsman. It would be useful to Corrections officials if this session were reinstituted.

The Ombudsman's office has been asked to take part in the orientation which each staff person will undergo at the new Fraser Regional Correctional Centre. Some centres have requested that we be a part of annual staff training sessions as well. Such measures are useful because it is important that line staff understand our role when they encounter our investigators in the institution.

BCGEU complaint regarding Wilkinson Road escape

1. Background

Early on the morning of March 20, 1989, three prisoners escaped from the Vancouver Island Regional Correctional Centre (VIRCC) on Wilkinson Road in Victoria. Although they were eventually recaptured, the incident raised several questions about security at the centre and the related safety of staff and the general public.

On April 7, 1989, the B.C. Government Employees Union wrote to the Ombudsman to request that this office undertake an inquiry into "the overall operations of the Corrections Branch". The principal situation which triggered this request, according to the letter, was the VIRCC escape.

We eventually replied that we did not believe the call for a full, independent, public inquiry by this office into the overall operations of the Corrections Branch was warranted. We did, however, investigate the concerns raised about the VIRCC escape.

Subsequently, we reviewed the Inspection and Standards Division's investigative report on the incident and questioned the inspector who authored the report. The Corrections Branch also made other relevant documents available for our study. We met with senior staff from Vancouver Island Regional Correctional Centre as well as representatives of the BCGEU from Victoria and from the Centre. These parties furnished additional documents for our consideration.

2. Finding

The escape had taken place through the windows of three cells in a living unit. This called into question the appropriateness of the type of window utilized when the new centre was constructed. Minutes from meetings relating to the development of the new VIRCC indicated that a great deal of consideration had been given to the selection of the window to be installed in the living units. Following the escape, the Corrections Branch had the windows tested to determine the implications for their future use in Corrections structures. The Inspection and Standards Division was to make recommendations to the Branch concerning these windows.

In its letter of complaint, the BCGEU related some of the problems it perceived in the Correction Branch's operation to "a series of government cutbacks which, over time, have severely restricted the ability of the Corrections Branch to operate effectively". Staffing had, in fact, been reduced at the Wilkinson Road Jail. In order to meet its staff allotment, the previous practice of one living unit officer covering two units during the night shift had been changed 17 months before to one officer covering four units. The living unit officer's basic duty was to conduct a count to ensure that residents were accounted for every 30 minutes. With 64 cells in four units to check, this function occupied the larger part of the half hour. The one-officer-per-two-units formula was restored at night following the escape.

Another staffing change made by management after the escape was the re-implementation of a "prowl" officer to check the perimeter security of the grounds. This post disappeared in 1985 when the new centre was constructed it was believed that the security provided by the outer walls of the new building made such a function

unnecessary. Currently the prowl is conducted by a vehicle that checks the prison perimeter at three points, commands a relatively restricted view of each position, and would likely have limited impact upon intruders.

It had been suggested that a foot prowl consisting of a guard or a guard with a dog would be more effective. Centre management, however, were of the opinion that such an arrangement would only put a foot patrol at risk and that currently the uneven terrain of the prison-grounds would not permit a foot patrol to cover easily the entire circumference of the prison. Management appeared to be moving to the position that technology held the answer for this present requirement and was considering the use of motion-detection devices at key points along the prison perimeter, possibly enhanced by improved camera surveillance.

Prior to the March 1989 escape, the focus of security of the Wilkinson Road prison structure was on containment. Officials were confident they had a building that would keep people in. In fact, the supposed security of the perimeter building wall may well have had an effect on the manner in which staff approached their security duties at the centre, and some may have unrealistically thought that escape from this modern state-of-the-art structure was next to impossible. Outside the walls of the building, even on the grounds surrounding that building, there is less control over any intrusion by those attempting to break in to the facilities to aid an escape. For the vast majority of cases involving provincial prisoners, who are serving sentences of up to two years less a day, the internal security focus is effective. However, for a significant number of inmates who are awaiting trial for major crimes, particularly inmates who have connections to organized crime, and who can command significant resources, a re-thinking of this security position seemed necessary.

Thus, following the escape incident, the Corrections Branch appointed a committee to tour provincial facilities to give consideration to external security factors. The committee's report is currently being considered by senior Corrections officials and will be reviewed by the Ombudsman's office.

3. Conclusion

With measures such as the committee to study external security, the consideration of such items as motion detectors and an infrared ray camera at VIRCC, the testing of the living unit windows, and the revised staffing structure put into place following the escape, the Corrections Branch appeared to be making an appropriate response to the crisis generated by the March escape.

4. Shift Overlap

We believed, however, there was one other issue which remained to be considered. The April 7, 1989, BCGEU letter to the Ombudsman stated that "The further removal of the shift overlap ... which had previously allowed on-coming staff to be briefed about problems, meant that relevant information noted three days before the escape occurred was not communicated to subsequent shifts".

In 1985 a new contract had been agreed to which eliminated the shift overlap. The claim had since been made that this had a negative impact upon the running of such facilities as VIRCC. The claim was that the shift overlap, which included a general "muster" period to discuss significant information, was superior to the current practice of simply reading that information in a unit log or on a general notice board or being advised of it by a shift supervisor.

Several reasons have been put forward to support the claim that shift overlap has a positive impact on the operation of the institution. These have been elaborated upon in various BCGEU submissions and include the following:

(a) What is written on a unit log book may not be made known to officers in other parts of the institution - such as the kitchen or the gym - and an inmate who is the subject of a log comment may be spending at least a portion of the day in those other areas. A general muster period would allow for widespread sharing of significant messages.

(b) A staff-person may be reluctant to record feelings and hunches in a log because of their uncertain nature. These are matters which may nevertheless have significance for the successful operation of the institution. A muster period could also be used for a mini-

training session. It provides an opportunity for management to ensure that staff are up to date on certain procedures or innovations. It also provides senior staff with an opportunity to assess the fitness of an officer for a particular assignment that day.

(c) The muster period assists a feeling of group belonging. This might afford the only opportunity to meet new workers. And with living unit officers in some of the newer institutions being locked away from fellow officers (in with a group of inmates for the larger part of a 12-hour shift), it has been suggested we may soon be seeing a modified type of "Stockholm Syndrome" behaviour emerging, where officers develop an inappropriately personal relationship to the inmates.

(d) A forum for some manner of open exchange would permit staff to feel they were more involved, and this would have the effect of helping them feel better about their work. A resulting enhanced feeling of unity with one's colleagues is important for team building.

(e) Federal Corrections, police forces and hospital staffs use a shift overlap in the belief there is usefulness in doing so. There are claims of an increase in critical incidents, increasing use of sick time, or burn-outs and resignations because it no longer exists in the form it once did in the B.C. Corrections system.

In practical terms, the elimination of the shift overlap saved Vancouver Island Regional Correctional Centre 2.6 full-time staff positions per year. The shift overlap had resulted in corrections officers having an additional eight days a year away from the job as compensation for the time taken for the daily shift overlap. We suggested that the Corrections Branch might wish to consider whether the cost of that time away from work was really such a negative factor in view of the fact that Corrections workers operate in a highly stressful environment.

Regarding the claim that relevant information pertaining to the March escape was not communicated to other shifts, we considered it speculative to say that there would have been any impact on the escape had these remarks been brought out at a staff muster period. The observations were at best vague. It was difficult to construct a convincing case that, had these remarks been brought out at a general muster period, the escape would not have occurred.

Nonetheless, from the point of view of staff efficiency, the shift overlap may be desirable. It is not critical — but neither are several other features of the workplace which the astute employer recognizes enhances employee performance. The Ombudsman's office made no recommendation on this matter but rather made these observations to assist the on-going review of various staffing models which the Solicitor General's Ministry is undertaking. (CS89-162)

Transferred federal inmates unaware of provincial procedures

A long-standing concern of this office was revived when a group of forest camp residents complained that they had not been fully or accurately informed about the operation of the provincial corrections system at the time they decided to transfer from federal centres. In previous years we had received complaints arising from differences between the federal and provincial systems with respect to matters such as responsibility for payment for dentures and eyeglasses, wage levels, and programs available to inmates. We had suggested to the Corrections Branch that a brochure or information sheet be prepared to describe to federal inmates considering a transfer the differences they might expect to find in the provincial system.

The forest camp residents also said they would have appreciated information about policies with respect to opportunities for transfer back to the federal system. When we inquired about how our earlier suggestion had been handled, the Corrections Branch provided us with a draft brochure it had prepared and invited our further suggestions, which we provided. The brochure should appear in its final form shortly and should reduce uncertainty and complaints in the future. (CS89-163)

Letter ban lifted

A woman incarcerated at a correctional centre complained about a directive that had been issued to all units. Until that time, prisoners had been permitted to write to friends in other areas of the centre. The new rule exempted from this practice prisoners who were being held in the segregation unit for disciplinary reasons.

The complainant pointed out that, under the Correctional Centre Rules and Regulations, prisoners in segregation retain "customary privileges respecting letters". Although correspondence between prisoners in a facility is not specifically mentioned in the Rules and Regulations, we regarded the change as contrary to the spirit of the provision allowing segregated prisoners to write letters. Upon reflection, prison officials agreed, and the directive was cancelled.

Officials have the right to open and read all inmate correspondence other than letters designated as privileged, such as those addressed to the Ombudsman or to the inmate's lawyer. We believed this power to be sufficient to address any security or management concerns that might arise. (CS89-164)

Inmate says methadone withdrawal too rapid

A man who had been receiving methadone regularly from his doctor was placed in custody in a regional correctional centre. There he was to be gradually withdrawn from the drug over a period of eight days. He said he believed the planned withdrawal was too rapid and would put his health in severe jeopardy.

The Branch medical policy for methadone addicts provides for enforced withdrawal by diminishing dosages. In this case, the complainant's own doctor had consulted with the centre's physician and agreed with the treatment plan. He also assured our office that, while the patient would experience discomfort, his overall well-being was not threatened. We therefore were unable to substantiate his complaint. (CS89-165)

The value of love's labour lost

During hobby time at a regional correctional centre, a resident had laboured hard to produce a series of art-plaques — posters set against plywood and lacquered over to a bright sheen. While his plaques were drying, he suddenly found himself transferred to a camp setting hundreds of miles away. Although he had been told that his hobby projects would be sent after him, months passed and they did not arrive. Finally, he was informed that they could not be located.

Reluctantly, the complainant said he would accept monetary reimbursement instead, and placed a value of several hundred dollars on his plaques. The institution's computer, however, had recorded that approximately $134 had been spent by the inmate on hobby supplies. The centre agreed to reimburse the complainant for this amount. Although the settlement did not reflect the cost of his hours of work, the inmate indicated that he was happy that he had not suffered a total loss. (CS89-166)

Inmate and money part company

An inmate called our office to complain that a bureaucratic mix-up had left him with no money to purchase canteen supplies. He said he had been transferred to a new facility two weeks earlier, but his money had somehow been left behind.

Our investigation confirmed the complainant's story. After being scheduled for a transfer from Vancouver Island to a camp facility in the Chilliwack area, he had been kept at the Lower Mainland Regional Correctional Centre for processing longer than anticipated. His trust account had been sent to the camp by the Vancouver Island Regional Correctional Centre and then back again when he failed to show up at the camp. The Vancouver Island officials, on being told by us what had happened, promptly faxed his account record to LMRCC so that he could finally dip into his account. (CS89-167)

Files go missing in desk drawer

Any person who has served time in federal custody can request and receive from Corrections Service Canada copies of his personal files, with limited exceptions, as provided by federal access to information legislation. It is our opinion — expressed in the Introduction to this report — that the federal policy regarding access to personal files is reasonable and should be adopted by the provincial authorities as well.

An inmate who had been transferred to a provincial correctional centre made such a request for his medical files, and these were duly forwarded by Corrections Service Canada to the provincial centre for delivery to him. He contacted us when the package had failed to arrive after some length of time.

We determined that the files had been sent by registered mail to the Kamloops Director and forwarded to the Lower Mainland Regional Correctional Centre, to which the complainant had been transferred. On arrival there, they had been given to a staff member to hand to the complainant. However, the inmate had been retransferred to another institution, and the staff member decided to hold them in his desk. A week later the staff member took two weeks' holiday. By the time he returned, the inmate had been brought back to the LMRCC, so the staff member was able to deliver the documents. However, as the package had been opened in transit, the inmate then complained that his files had been improperly opened as well as delayed.

We established that the staff member who had held the files in his desk was an inappropriate person to be given the files for delivery to the complainant. The delay was clearly unreasonable. However, the opening of the package had not been an error, as Corrections Service Canada is not designated in provincial regulations among those who may send sealed correspondence to inmates.

To assure the complainant that he had received the complete package, we confirmed with the Ottawa office of the Corrections Service that he had received all of the files that had been authorized for delivery. We asked the Director of the LMRCC to review the handling of registered mail with his senior staff to ensure that important personal documents are carefully and expeditiously received and delivered at the institution. (CS89-168)

Copy of regulations seized from inmate

The administration of provincial correctional centres is governed by the provisions of the B.C. Corrections Act and its regulations. In general terms, the Correctional Centre Rules and Regulations define for inmates and staff their rights, privileges and responsibilities. The regulations also delineate matters such as appeal periods, complaint procedures and assessment criteria by which an inmate's conduct is considered for remission.

A man complained to our office that when he was transferred from the Lower Mainland Regional Correctional Centre, where he was given a copy of the regulations, the receiving centre would not allow him to keep his copy when he was admitted. He said that an admissions officer told him that it was not for inmates.

It was the practice at the receiving centre to extract sections of the regulations and post them in the units for reading. However, the Manual of Standards for the Corrections Branch requires that every centre shall make a copy of the rules and regulations available to each inmate upon admission. Reminded of this fact, Corrections Branch authorities instructed all admissions staff to adhere to the policy. The complainant's copy was returned to him. (CS89-169)

Inmate transferred, razor goes AWOL

On a Sunday visit, the sister of a minimum security inmate brought him an electric shaver and some clothes, which he then stored in his locker. Later, after spending time in segregation for bad behaviour, the inmate was moved to a forest camp. By the time he asked for his belongings in his locker to be sent to him at his new location, they were nowhere to be found.

Officials at the original facility told us they had no way of knowing if the inmate had ever really had the items in question, as there was no record of their having been received. Standing against this position was the testimony of the inmate's sister and of another inmate who said he had seen the razor and clothes at the original centre.

While the strength of the inmate's claim was somewhat circumstantial, we were inclined to accept his version of events. It seemed unlikely that anyone would construct such a detailed account as these witnesses provided merely in the hope of wrongfully obtaining some socks, underwear and a pre-owned electric razor. The local Director agreed, and reimbursed the resident for the missing items. The facility also took steps to ensure that, in future, belongings brought in by visitors would be properly recorded and goods belonging to a transferred inmate would be secured to prevent their going astray. (CS89-170)

Timing wrong for insulin injection

A diabetic resident of a secure centre complained that his morning insulin injection was being administered at the wrong time. He said he was supposed to receive it before breakfast, but instead was getting it up to an hour after the morning meal.

Shortly after making the complaint, the resident left the institution. However, as a similar situation had occurred at that facility in the past, we suggested a procedure be put in place to protect the interests of future diabetic inmates. The facility Director implemented our suggestion. (CS89-171)

No alcohol counselling, no temporary absence

An inmate of an adult facility complained that he had been denied a temporary absence (T/A) due to his refusal to participate in alcohol counselling. He felt that this was discriminatory, as others who had refused counselling had been granted T/As.

To be granted a T/A, an inmate must have both institutional and community support. The general policy is that participation in alcohol counselling is voluntary.

The request had been denied because of a lack of institutional support. Despite ten impaired convictions since 1963, the inmate appeared to refuse to accept any responsibility for his behaviour and continually denied having a problem with alcohol. In discussion with our investigator, the inmate stated matter-of-factly, "I'm 54 years old. I have no intention of changing. I enjoy my life."

Our office agreed with the decision of the institution on this particular request. A T/A is a privilege, not a right, and the apparent lack of concern for public safety demonstrated by the complainant justified the denial of a T/A on this occasion. (CS89-172)

Recommendation for psychiatric assessment overlooked

Believing the court had ordered a 30-day in-patient psychiatric assessment, a remanded prisoner complained that he was still in jail.

Our inquiries revealed that the court had recommended the man receive a psychiatric assessment on an out-patient basis before proceeding to trial. Although the recommendation appeared on the warrant of committal, neither the court nor the jail had made the necessary request to the Forensic Psychiatric Services Commission. Crown counsel agreed to request that a Commission psychiatrist interview the complainant in jail and submit an evaluation to the court. (CS89-173)

Criminal record contains unearned embellishment

A forest camp resident told us his criminal record contained an error. A simple assault charge had been mistakenly recorded as an assault causing bodily harm, and he was afraid the error might affect his chances for temporary absences or for parole. We checked with the court registry and found the inmate's story to be true. We then passed the information on to the Criminal History Branch of the RCMP in Ottawa, and the record was promptly corrected. (CS89-174)

Flowers and chocolates also welcome . . . .

Once an investigation has been concluded, we do not usually expect to hear back from a complainant unless he or she is especially distressed about the outcome. We were pleasantly surprised to receive the following from a former inmate who had re-established himself in the community:

> I wish to acknowledge, with grateful thanks, your letter of _____ pertaining to the matters I had raised with you regarding the operation of the _____ Correctional Centre.
>
> I note the efforts which the Director has taken to remedy the deficiencies which existed in regard to the accounting of the Inmate Welfare Fund and the steps taken to ensure the privacy, dignity and respect of inmates whilst female staff are on duty. Actions taken in both these regards appear quite satisfactory and should do much to improve the general tone and operation of the _____.
>
> I might add that these matters, having had no satisfactory resolution prior to your intervention, clearly demonstrate the value and need for the Office of the Ombudsman. I appreciate your response to them and the importance which you

have placed on their resolution. (CS89-175)

Lack of privacy hampers treatment program

An unusual complaint came from a resident of a camp for sex offenders. A recently arrived psychologist had inaugurated a treatment program for about ten inmates who were considered high-risk candidates for recidivism. Successful application of the program, which was designed to teach self-control techniques, required a facility which would allow the participants periods of privacy — something hard to come by in an open camp setting.

We regard the treatment of this type of offender as paramount for the protection of society. When an offender's sentence has run its course, the correctional system cannot simply let a walking time-bomb back onto the streets. Therapists in the field told us the program in question was one of the most beneficial offered to sex offenders at the present time.

Before making a recommendation to the Corrections Branch, we considered the fact that a lack of a facility might be deemed a matter of resource allocation, and, as such, outside the mandate of this office. However, we have consistently taken the position that where a public authority is prevented from properly performing its legislated duties by a lack of resources, it is appropriate for the Ombudsman to recommend that sufficient resources be provided to enable it to do so.

When we approached the Corrections Branch, we were told that the project was being considered for implementation in an upcoming budget year following a submission from the local Director requesting that funds be provided. We were pleased to note some weeks later that the Corrections Branch had obtained a trailer to be used for the program until money was available for the construction of a proper treatment facility. (CS89-176)

Back to the future

While incarcerated in a secure centre in the Interior, an inmate had an x-ray report completed about his back problems. As he was leaving the institution shortly and needed the report to get further treatment, the facility nurse brought a copy to the man's unit and asked that it be given to him. When the inmate asked about the report the night before his release, staff assured him it would be available at the point of release next morning. It was not.

A few days later the former inmate telephoned the institution and was advised that he could pick up a copy of the report the following Sunday. This necessitated a lengthy trip, as he had moved up country, but he dutifully reported to the institution on the appointed day. When he arrived, nobody could find his report. He returned the following day and was told by staff that they had located the report but would not release it.

The next day the man telephoned senior officials at the centre, who assured him that the report would be mailed to him. The following Monday he telephoned our office in a panic. The report had not arrived, and he had to have it to take to Vancouver the next day to have an MVI scan on his spine.

On phoning the correctional centre in the Interior, we were put through to a nurse who suggested that since the x-rays had been done at Oakalla, a copy of the report should be available at that institution. Oakalla officials told us they didn't have it, so we again called the nurse and asked her to fax us a copy. Arrangements were made with the complainant to pick it up at our office the next morning on his way to the Vancouver hospital.

When more time dragged by and the copy had not arrived, we called the interior centre's Acting Director of Operations, who informed us that clearance had just been obtained to forward a copy. It arrived shortly thereafter and was picked up by the complainant in time for his appointment. Needless to say, his complaint was justified. (CS89-177)

Procedural oversight leads to lengthy lockup

Protective custody (PC) provides for the separate housing of prisoners who would be at risk in the general population. Typically, protective custody inmates have a history of sex-related offences or are regarded by others as "rats" or informers. Some prisoners who have

mental or emotional handicaps are also housed separately.

The decision to accept the "PC" designation is one which has serious consequences, because the label is very difficult to change and tends to stick, even when someone returns to the system years later. It is therefore important that a newly admitted prisoner be made fully aware of the long-term consequences of a protective custody placement. Consequently, when a prisoner indicated on admission that he wanted PC status, the practice was to hold him in a locked cell until he was seen by a classification officer. People admitted late in the day were locked overnight.

A man who had requested PC status complained to us that he had been locked up, except for a daily one-hour exercise period, during the several days since his admission. We discovered that the system had broken down when the complainant had to return to court the morning after admission, and so had not been seen in the usual way by a classification officer. He was released as soon as the omission was discovered and was placed on a PC tier.

This unfortunate error led to a change in practice. From that point on, a senior officer of the unit housing remanded protective custody prisoners would be able to place a man in a protective custody cell once it was clear the inmate had made an informed choice. The new procedure would avoid most overnight lockups and would ensure no one would be ignored for days at a time. (CS89-178)

Doctor's orders, no kidding

During one of our visits to a correctional facility, an inmate complained that he was being forced to do work that was more physically demanding than the "light duties" his doctor had recommended to encourage healing of a wrist ailment. The inmate told us that staff paid little attention to inmates' health concerns even when they had been confirmed by medical reports.

We verified and advised facility staff of the truth of the complainant's description of his doctor's recommendation. Later the inmate contacted us to let us know that he had been assigned a different job that would allow his wrist to heal properly. He added that another inmate with a medical problem was not having the difficulties with staff that he had encountered, and said he attributed this fact to the result of our involvement. (CS89-179)

Broken needle worries inmate

A female inmate told us the tip of a hypodermic needle had broken off and lodged in her arm prior to her incarceration. Worried about infection, she wanted it removed as quickly as possible, but medical staff at the institution refused to take her concern seriously. She said the doctor who had examined her when she had been admitted had told her the matter wasn't urgent and hadn't made a decision about when to remove the needle. After being told several times that she could see a doctor again "tomorrow", she contacted our office.

Prison officials told us that although the complainant's condition was considered not to be an emergency, she could see a doctor the next time one visited. Two days later her arm was x-rayed, and the following day removal of the needle was ordered. The procedure was carried out a few days later. (CS89-180)

Lost to the stroke of an editor's pen

An environmental protester who had served a short sentence at a community correctional centre told us that its staff had tried to censor him. Following his transfer from a more secure centre, he decided to write to his local newspaper about the conditions he encountered in provincial jails. Corrections staff, on reading his colourful descriptions of guards and their treatment of prisoners, told the writer he was providing an unfair account of staff and their duties. Moreover, they told him, some inmates might object to the publicity about the institution. Consequently they suggested he not send the letter.

The inmate responded by crumpling up the letter and tossing it in the wastebasket, but later retrieved it and smuggled it out with the help of another resident. The letter was duly published after newspaper staff, in the normal course of slashing letters to the editor, unwittingly censored precisely the sections that prison staff had found objectionable.

We did not support the complaint about

censorship, as it was apparent that staff, recognizing that in a minimal security setting the letter could go out any time the writer wanted it to or could be mailed after his imminent release, had merely suggested that he reconsider his decision to send it. (CS89-181)

Anxiously awaiting test results

An inmate of Twin Maples Correctional Centre told a visiting Ombudsman Officer that she was anxious to learn the results of some recently conducted medical tests. Because the doctor who served the centre visited only weekly, it would be a number of days before she could be told of the results. The complainant believed the situation could be alleviated for her and others if the doctor attended more frequently.

Given the size of the centre's population and the easy access to emergency medical services in the community, a recommendation that the doctor visit more often seemed unwarranted. The problem was presented to the Director. After she conferred with the doctor who provided service to the centre, it was agreed he would discuss results with an inmate by telephone from his private office in cases where the inmate was very anxious and where the tests related to potentially serious health matters. (CS89-182)

Motor Vehicle Department

Drivers' altercation leads to unexpected threat

Two drivers got into an argument over a traffic incident. One of them called us to complain that the other had done something quite beyond the acceptable range of insults exchanged in such situations: he had warned our complainant that he was an employee of the Motor Vehicle Department with the power to revoke the man's driver's licence. The complainant recorded the other car's plate number and reported the incident to the police.

The day after the incident, the complainant told us, a message was left on his answering machine warning him to drop the matter. Since the other person had been able to obtain his home telephone number, the complainant was worried that he might indeed have the power to have his licence cancelled.

We contacted the police, who promised to investigate the matter. A few weeks later they told us that an employee of the Motor Vehicle Department had admitted to inappropriate actions involving the use of driver information, and steps were then taken by the Department to ensure that the employee would not repeat such actions. (CS89-183)

Caveat venditor

The owner of a pickup truck who placed his vehicle on consignment with a used car dealer was left in the lurch when the dealer sold the vehicle without paying either the owner or the bank that held an $1,800 loan on the truck. The dealership went out of business, and the truck owner sued. He won in court but received only 35 cents on the dollar, which was a result of the distribution to various debtors of the $5,000 motor dealer bond that dealers are required to post on opening a business.

Considerably out of pocket, the truck owner complained to us that the Motor Vehicle Department had acted wrongfully in allowing the vehicle to be transferred without ensuring that he and the bank were paid off first. He also complained that the amount of the motor dealer bond was a ridiculously low sum to require of dealers in view of today's car prices.

We explained to him that the Motor Vehicle Department has no role to play in ensuring the payment of debts. The transfer paper that is registered by the Motor Vehicle Department passes registered but not legal ownership of a vehicle. The reason it is so important that purchasers of used vehicles check for the existence of liens is that any creditor can take steps to repossess the vehicle, regardless of who the registered owner is, if there is default on a debt on a vehicle on which a lien has been registered.

Owners who place their vehicles on consignment with a dealership are protected by the fact that they may refuse to sign the transfer form until they are paid by the dealership after the vehicle has been sold. In some instances, we were advised by the Department, owners are tricked into signing blank transfer forms when they place their vehicles on consignment, so it's a classic case of seller beware.

The amount of the motor dealer bond is set by the Motor Dealer Act, and the complainant was not alone in his concern that the legislated amount was unrealistic. The Branch that administers the Motor Dealer Act advised us that the government was currently considering either substantially increasing the amount of the bond or replacing it with an insurance fund. (CS89-184)

Cancellation for "medical reasons" mystifies healthy driver

A teacher obtained a Class 4 driver's licence to enable him to drive a small bus to take students on field trips. Holders of such licences are required to undergo medical examinations from time to time at the request of the Motor Vehicle Department. On receiving such a request, the teacher went to his doctor and was given a clean bill of health.

Shortly afterwards, the teacher was surprised to receive a letter from the Motor Vehicle Department telling him that his Class 4 licence was cancelled because of a medical condition reported by a doctor. Doctors are required by law to report to the Department any patient they consider unfit to drive because of a medical condition. The teacher had seen no other physician except his family doctor, so he asked him what it was about. His doctor told him he was fit to drive as far as he was concerned, but did another medical as a check. Again, a clean bill of health. The teacher then called officials at the Motor Vehicle Department, who advised him that they were not at liberty to reveal the name of the doctor or the specific nature of the condition, but said it was related to the use of medication. He could, they said, appeal the cancellation on submitting a fee of $50. Completely mystified, as he took no medication whatsoever, the teacher called us.

Department officials told us that although the medical form had revealed no problems, the doctor had attached to it a confidential letter indicating that the patient was a cocaine addict and had admitted to drinking up to 40 ounces of alcohol daily. Consequently the Department felt it had no choice but to take appropriate action for the public protection by reducing the driver's licence to a Class 5 so he wouldn't be authorized to carry passengers.

Sometimes complainants do withhold from us information that reflects adversely on their interests. Nevertheless, we were curious about the apparent anomaly between the sparkling medical form and the contents of the accompanying letter, so we called the doctor. He said that he had indeed sent the Department precisely such a letter, asking it to take appropriate action. The only catch was that the letter referred to quite a different patient.

When we called the Department a second time, it checked the letter and discovered that, indeed, it named another driver and had inadvertently been placed on the teacher's file after having arrived in the same package as his medical form. Arrangements were made to reinstate the Class 4 licence forthwith. (CS89-185)

Purchaser of hot car hit by cold reality

When you register a car in your name, your legal ownership of that car is confirmed, right? And if you bought a car registered in someone else's name, and searched the records at the Motor Vehicle Department to satisfy yourself that "everything is OK", you would be safe in making the purchase, right? And if a vehicle is stolen, the Motor Vehicle Department, through its sophisticated computer system, would be one of the first to know about subsequent transactions by the thief, right?

The complainant, who bought a 1977 Porsche in 1982, learned to his dismay that the correct answer to each of the above questions is "wrong". After responding to a newspaper ad for the car, he negotiated a loan to cover part of the cost of the vehicle, checked for any liens and encumbrances both through his bank and by personal inquiry at the Motor Vehicle Department, and closed the deal with the seller — a rogue. The complainant took what he thought were necessary and prudent steps to confirm both the validity of registration and the seller's identity as the registered owner.

Several years later, after spending thousands of dollars restoring and improving the car, the complainant resold it to another individual whose hobby was restoration and repair of Porsches. Within several months this individual — we'll call him Mr. B — resold the vehicle for a combination of cash and a vehicle trade to

Mr. C, who in due course committed a traffic violation, whereupon the attending police officer ran a vehicle identification number (VIN) check through his patrol car's onboard computer, linked to the Canadian Police Identification Computer (CPIC). Bad news: the vehicle had been stolen from an individual in Quebec and resold to our complainant on the west coast. The vehicle was immediately impounded, and a legal battle ensued as the representative of the insurance company, on behalf of the individual from whom the car had originally been stolen, commenced a legal action to assert its rightful title to the vehicle, under the terms of the theft insurance contract held by the original owner. Mr. C saw that he was losing his investment and sued Mr. B, whom Mr. C claimed had sold him a stolen vehicle. Mr. B likewise launched a legal action against the complainant on the same ground.

The law of the sale of goods in such instances is relatively simple — the seller can pass on to the buyer no better title than he, the seller, possesses. Thus, with the rogue long since out of the picture, the complainant, after a lengthy and expensive court battle in which Mr. B and Mr. C spent roughly equivalent amounts, was left "holding the bag". As part of the legal battle, the complainant joined the provincial government in the action, arguing that the Motor Vehicle Department, carrying out its mandate under the Motor Vehicle Act, was negligent in either failing to notify the complainant that the vehicle was stolen or in failing to clearly warn the complainant of the distinction between registered ownership and legal ownership. The judge, considering the duty of the Motor Vehicle Department under both the Motor Vehicle Act, and the applicable provisions of the Sale of Goods Act, dismissed the complainant's case. In our opinion, the court correctly addressed the issues and applied the law. The law, as it presently exists, offered no relief to the complainant.

Of particular interest to our office was the fact that the complainant took a common-sense approach to vehicle ownership, believing that registered ownership was the same as legal ownership. It is a rare case in which the registered owner is not also the person entitled to legal possession of the vehicle. We formed the view that individuals making private purchases would be far more careful in ascertaining whether a vehicle is stolen if this distinction was fully realized as a result of clear warnings issued as a matter of routine by the Motor Vehicle Department. In addition, we learned that the Motor Vehicle Department does not routinely have access to CPIC data regarding car thefts. This means that a stolen vehicle cannot be identified at the time of registration. Also, access to CPIC data can normally be gained only by way of a request to the RCMP or a local police detachment, which, because of their work load, generally will do a VIN search only where a reasonable suspicion of theft can be established by the applicant. All of which put the complainant in a rather difficult position: he honestly felt that he had done everything he could do to safeguard his interests prior to completion of the purchase.

The complainant argued that his claim may have been defeated in the courts but should nonetheless survive as a matter of fairness, and that, as the person at the end of the chain of sales, for whom no further recourse was available, he should be compensated in full for his losses by the provincial government. We disagreed on that point, finding that such compensation would amount in effect to a province-wide motor vehicle title insurance scheme, and numerous other cases, usually involving some application of the rule of caveat emptor ("let the buyer beware"), would follow.

We were, however, of the opinion that the issues brought before the court concerning to the public responsibilities of the Motor Vehicle Department were worthy of litigation, as a matter of public interest. For that reason, we recommended to the Ministry of Solicitor General that the three "owners" of the disputed vehicle be compensated in full for their legal costs incurred as a result of their various court actions. The Ministry of Solicitor General agreed, and ex gratia payments were made to each of the solicitors for the complainant, Mr. B, and Mr. C. We also recommended that the Motor Vehicle Department issue clear and highly visible warnings, both in its documentation and on its business premises, advising individuals of the distinction between registered ownership under the Motor Vehicle Act and legal ownership.

As a last observation for the consideration of the Solicitor General, we reviewed the pertinent aspects of the California vehicle registration system, a fully computerized and integrated system in which vehicle title, financial encumbrance, lien information, and stolen vehicle alerts are combined in one effective and easily accessible data base. We recognized the formidable task presented by the integration of the various computerized elements to create such a system in B.C., but noted also that each component is now in existence; it is a matter of effectively linking them together. (CS89-186)

A new deterrent to discourage speeders

A driver who got a speeding ticket objected to being fined in addition to receiving penalty points that would result in increased insurance premiums. He said the effect was a double penalty and double payment for the same offence, which he argued was unfair.

We explained to the person that effective July 17, 1989, the Motor Vehicle Department reinstated a policy of charging fines for moving violations such as speeding. The rationale provided for the reinstatement was that fines serve as a deterrent to unlawful driving and are more effective than penalty points alone in reducing the growing numbers of traffic accidents, injuries and deaths occurring in B.C. each year. Consequently the so-called double penalty was seen to be justified in the public interest.

The accumulation of penalty points is monitored by the Department as a guide to determine the point at which the suspension of a licence may be warranted. Penalty points are also used by ICBC to calculate a driver's penalty point premium — a charge levied against drivers whose records suggest they pose a special risk to the Corporation's insurance fund. A driver who receives a penalty point premium bill may choose to pay the bill or surrender his or her driver's licence for any portion of the billing period to reduce or eliminate the premium payable. The penalty point premium is separate from the premiums charged for automobile insurance, but the income from such premiums is added to the ICBC's general revenue to help offset the cost of claim payments, which are reasonably expected to increase with the increased risk created by unsafe drivers on the road. (CS89-187)

Why only your mom should know your birthday

An irate driver told us the Motor Vehicle Department had refused to renew his licence because of unpaid fines. He said he hadn't even committed the infractions for which the fines had been charged, and this was the first he'd heard about them. Someone who knew his birthdate had obviously impersonated him on being stopped by the police, he told us.

As a general rule, police record the vehicle licence number in cases where a driver's licence is not produced. This had been done in this instance, and the police were satisfied that the driver who had been fined was not the same person who had committed the offences. The man was advised to obtain a letter from the police to that effect and to forward it to the Motor Vehicle Department.

After earlier incidents of a similar nature were brought to our attention, we discussed with the Ministry of Attorney General possible ways of avoiding such bureaucratic tangles facing impersonated drivers. [See our 1988 annual report, page 94.] The result was an amendment to the Offence Act which, when enacted, will enable such drivers to follow a simple procedure to have their records amended by the Court Services Division and to have the Motor Vehicle Department automatically notified. (CS89-188)

No unfair advantage to big bidder

A number of firms competed in the tendering process for a contract to provide the Motor Vehicle Department with detailed analyses of the condition of motor vehicle weigh scales throughout the province for the purpose of planning capital expenditures and systematic upgrades to these facilities. Considerable time and funds were required to prepare a realistic and detailed cost estimate in the course of preparing bids.

The complainant, whose firm was one of the bidders, was concerned about whether it was realistic to participate in the bidding process, given that B.C. Buildings Corporation had also competed as an independent entity. He con-

tended that BCBC, with its large, decentralized structure of offices and staff throughout British Columbia, and with superior (in the complainant's view) access to information, would be able to provide comprehensive services at a price that no private entity could approach. This view led the complainant to question whether the Motor Vehicle Department had intended ever to let the contract to an organization other than BCBC; it appeared to the complainant that the Department was simply soliciting private bids for its own management information purposes, rather than with a genuine intent to create legitimate competition.

The Motor Vehicle Department was most cooperative in providing us with copies of each of the bids in the project competition, including that of BCBC. After reviewing this information, we sent a detailed list of questions to the Department regarding the tendering process and the position and advantages, if any, held by BCBC relative to the private sector bidders. The Department's response revealed that BCBC had been treated like any other bidder and that it enjoyed an advantage only as a direct result of its decentralized organization. With its extensive staff of trained building inspectors, BCBC had the flexibility to perform quick yet comprehensive inspections in the field without incurring significant expenses for travel, lodging or meals — components that formed a major part of the costs set out in the private bids. In addition, we concluded that the services proposed by some of the private bidders were sophisticated beyond the level necessary to perform an adequate assessment of weigh scale structure conditions.

As the bidding process appeared fair, we found the complaint not to be substantiated. (CS89-189)

Private investigator finds shortcut blocked

To have the information-gathering powers of an Ombudsman would be sheer heaven for private investigators who have to follow all these circuitous routes you have read about in detective novels. One imaginative investigator thought she would check out the possibility of finding a short cut through our office.

She told us that much of her work involved searches for missing persons and that often a crucial piece of information required was the identity of the owner of a suspicious car. Every time she called the Motor Vehicle Department hoping to get a name to match a licence number, she batted zero. She argued that it was in the public interest that the information be given to her, especially in cases where she was trying to unite missing children with their parents. She felt that the Department was unnecessarily strict in its hold on information and asked if we could loosen up their policy.

We looked at the rationale underlying the departmental policy that generally forbids the release of names of vehicle owners. The right of citizens to obtain access to information held by government has to be carefully balanced against the right to privacy, and the latter is what the departmental policy is designed to protect. If the driver in the car beside you at a stoplight checks you out and thinks you are attractive, you may not be thrilled if he or she calls the Motor Vehicle Department to get your name and calls you up. Nor would you be happy if an impatient trucker, incensed at your bumper sticker that says "if you are close enough to read this, you are a lame-brained dufus", finds out your name so he can show up at your front door to punch your lights out.

The Motor Vehicle Department releases information about the names of drivers only where it is sought for debt collection or law enforcement purposes where a motor vehicle is involved. For instance, such information would commonly be provided to gas stations whose customers have taken off without paying and to parking lot operators when fines for parking infractions are not paid. This policy is consistent with the principles set out in the federal Privacy Act, the purpose of which is to protect the privacy of citizens in their dealings with the federal government.

The major concern related to us by the Motor Vehicle Department about releasing information to private investigators had to do with the fact that several cases of abuse of such information had been reported when a more relaxed policy prevailed in the past. For example, if the driver at the stop light who wants a date with you cannot get your name from the Motor Vehicle Department but hires a private investigator who

tells the Department he's looking for a missing person, which you are in the mind of your secret admirer, then your privacy has been destroyed just as effectively as if the department gave the information to everyone.

As the complainant had informed us that she was involved in setting up an association for private investigators, we suggested to her that the association consider formulating a proposal by which, if names of drivers were released to private investigators, the government would have a way of preventing abuse of such information. To that end, we suggested that the association consult with the government agency that administers the Private Investigators and Security Agencies Act and acts as a regulatory and disciplinary body for private investigators.

Following our investigation, the complainant said that she agreed that the present policy was reasonable and would follow up our suggestion to see if a compromise could be reached whereby licensed private investigators would be able to obtain the names of drivers in cases where it would truly be in the public interest with minimal possibility of misuse. (CS89-190)

Police Services Branch

Flood-damaged farm remains viable, so no compensation

A farmer in the Peace River country complained that the Provincial Emergency Program had refused to compensate her for damage resulting from disastrous floods in the area in the autumn of 1988. Provincial assistance totalling $3 million had been granted to residents, small businesses and municipalities.

Our investigation showed that an insurance adjuster retained by the Provincial Emergency Program had spoken too soon when he assured the complainant that assistance would be forthcoming. As it turned out, assistance was refused on the basis that the complainant's situation did not meet the criteria required for compensation to be provided. The essential criterion was that "a farm must demonstrate that its viability is severely jeopardized due directly to emergency disaster losses and that business failure is certain in the absence of assistance." The complainant's losses, while significant, could not be shown to so severe as to jeopardize the viability of the farm as a business.

While this determination was unfortunate for the complainant, we did not find the application of such criteria to be unfair. In the absence of any evidence showing that the criteria were not applied evenhandedly, we advised the complainant that we were not prepared to substantiate her complaint. (CS89-191)

When first we practise to deceive...

A man complained he had been unfairly treated by the Security Programmes Division (responsible for issuing Private Investigation and Security Agencies licences) and by the organizers of a government-assisted training course who terminated his enrolment in a security alarm course.

Three weeks into the course, students were required to install an alarm — a process for which a licence was required by legislation. This was made clear to those enrolling in the course. When completing the licence application form, the complainant indicated, in response to one of the questions, that he had no previous criminal convictions — an answer he stuck by when the application was checked with him.

The standard Security Programmes Division security check on the application revealed a conviction, which was duly reported to the course organizers, who felt compelled to dismiss him from the program because of his lack of eligibility for a licence and because of his untruthfulness.

We concluded that the Security Programmes Division had acted properly in fulfilling its responsibility to ensure a high degree of integrity in the security industry. Furthermore, while the office has no jurisdiction over the course organizers, we considered the decision to release the complainant from the course to be well founded. (CS89-192)

A private eye with a pseudonym

A private investigator told us his licence had been cancelled for no apparent reason. He was at a loss to understand what might have precipitated such a step, he said, as he had no

criminal record or other history that would put his character in question.

The reason for the cancellation soon became apparent when we spoke to Ministry officials charged with administering the Private Investigation and Security Agencies Act. The complainant had indicated on his application form that he had no criminal record, and the licence was duly issued, enabling him to take immediate employment as a private investigator. In accordance with its standard procedure, the Ministry then conducted a follow-up check by contacting other authorities. The red flag went up when a police department informed the Ministry that one of its officers, on checking the complainant's ID in a pub, had found him in possession of a stolen vehicle registration with a different name than that shown on his private investigator's licence. Further investigation by the Ministry revealed a history of criminal activity and poor work performance for security firms.

As a result of this case, the Ministry amended its procedures to ensure completion of character investigations on applicants prior to the issuance of licences. (CS89-193)

Probation and Family Services

Unaware of procedures, father misses out on custody order

Court procedures are often confusing to citizens, as illustrated by the experience of a father involved in a custody and access dispute.

A conciliation counsellor was asked by B.C. Supreme Court to prepare a report regarding the custody and access of the father's children. The counsellor got the parents talking to one another in mediation sessions, and suggested to them that mediation would be more successful if their lawyers were not involved in the sessions. As a result, the parents were able to reach an agreement about the future of their children. The counsellor wrote a report to the court about the agreement and filed it at the court registry.

Two years passed with the father thinking that this report had been turned into a court order. He was surprised and frustrated to find out that the conciliation counsellor had not turned the report into an order, and that it was his own obligation to have taken steps through his lawyer (or on his own) to do so. He had believed there was no need to involve his lawyer after the mediation was over.

We agreed that the conciliation counsellor's advice about the role of lawyers during the mediation may have been confusing. We pointed out to the Ministry the need for all family court and conciliation counsellors to give clear information to the parties about the role of lawyers during mediation and to inform the parties of the status of a filed custody and access report. (CS89-194)

Ministry of Transportation and Highways

Resolved	42
Not resolved	-
Abandoned, withdrawn, nonjurisdictional	21
Not substantiated	29
Declined, discontinued	16
Inquiries	12
Total number of cases closed	120
Number of cases open December 31, 1989	37

A high volume of complaints in the past year resulted from perceptions of a shortfall in the quality of service provided by road maintenance contractors under the provincial government's privatization initiative. Many complaints focused on snow clearing delays on lower priority roads.

A process for addressing complaints by Ministry area managers has been established as a result of co-operation between our office and Ministry officials. Area managers are responsible for ensuring quality control by seeing that Ministry standards are met by contractors. The process is being positively received by members of the public, many of whom say they are more comfortable in directing such complaints to government rather than to private contractors.

Service station profits snowed out

The owner of a service station in the Rossland area — where drivers may greet heavy snowfalls with less delight than do skiers — was concerned about the performance of a private road maintenance contractor operating under contract to the Ministry of Transportation and Highways. While he observed that road plowing and sanding operations were more or less continuous during periods of heavy snowfall, he considered this to be of limited benefit to his service station, which was frequently made inaccessible to traffic by rows of plowed snow.

His complaint to our office was that the contractor refused to clear away the excess snow at the entrance to his station — a level of service that he believed differed from that provided to service stations closer to the centre of town. Simply to keep his station open, he said, he was forced to employ private snow-clearing services that cost him most of the day's profit.

We were able to substantiate the complainant's concerns in part. The Ministry's first priority in providing road-clearing services on highways was to keep the highways open and safe for vehicle passage, and we could not disagree with that consideration being given highest priority. However, it was also noted in discussions with the District Highways Manager for the Kootenay Boundary District that the highway snow-clearing contract contained a specific requirement to "avoid depositing snow at driveways and other entrances and around intersections." The latter was considered a secondary priority to keeping the roads clear, and was a service to be provided as time became available. The effects of a heavy blizzard on long stretches of road might mean that the snow-clearing equipment would have to operate continuously with no time available for clearance of driveways and other entrances to private facilities.

This administrative compromise was explained to the complainant, who would at least, in future, have a standard by which he could judge the performance of the private contractor. (CS89-195)

Agley, awry, and out of work

The best laid schemes o' mice and men gang aft agley, and leave us not but grief and pain, for promised joy - a classic dour line by a classic dour Scot.

The scheme of a heavy equipment contractor went agley with the sudden termination, after three days, of a job he had expected to last almost two weeks. That was the length of time he and the Ministry of Transportation of Highways had reckoned his loader would be in use when the Ministry offered him the work. As it would be his first Highways contract and thereby a foot in the door, he was glad to accept, even though it meant moving his loader several miles from

another project already underway.

Hardly had the new job begun when rain considerably in excess of a "Scottish mist" descended and turned the ground to mud and thence to muck. The prolonged rains made continued work impossible, and the operator was advised to haul his loader away. Before he did so, he called us to ask whether we thought he was getting fair treatment, as payment for only 36 hours, combined with cost of haulage, made the project a loss for him.

We concluded that the Ministry had acted in a reasonable manner. The nature of short-term highway projects is such that it is impossible to determine whether or not jobs will be interrupted by bad weather. There had been no written contract between the parties — only a verbal agreement with a rough estimate of the duration of the contract and a provision that the contract was dependent on the work being available. However, in consideration of the inconvenience and disappointed expectations faced by the complainant, Ministry officials met with him after talking to us and agreed to share part of the costs of hauling his equipment, thus providing a solution the operator considered acceptable. (CS89-196)

Busy logging road upsets quiet community

Late in the nineteenth century, prospectors hit by gold rush fever carved out a trail through an interior valley to carry them to the mother-lode. A town of 13,000 quickly sprang up, complete with 13 hotels and many brothels. By the mid-1930s, the gold, the brothels and most of the people had vanished. A few hardy individuals stayed on, and today some 30 people, including newcomers attracted by the quiet rural setting, live along the road that evolved from the miners' trail.

In 1988 their tranquillity was disrupted by a rush of another type altogether — logging trucks carrying "green gold" to a sawmill. Access along the public right-of-way had been granted by the Ministry of Transportation and Highways, and the logging operation that created the need for it was projected to continue for 20 years.

Several residents complained to our office, expressing outrage about the impact on their previously peaceful environment as well as concern for the safety of children living by the steep, winding, narrow road. Our investigation revealed a split in community thinking on the subject, as a number of the residents were dependent on the forest industry for their livelihoods.

In an effort to determine what room for compromise existed, we met with officials from the Ministries of Forests and Transportation and Highways, local school staff, logging company officials and residents. The construction of a bypass was discussed and rejected as being expensive and environmentally unsound. In view of a commonly expressed concern about safety, however, the Ministry of Transportation and Highways agreed to undertake improvements of the sections of the road that were considered by the residents to pose the greatest danger. (CS89-197)

Disappearing roads leave landowner without access

In the late 1960s, the Ministry of Transportation and Highways needed a strip of CPR right-of-way for its construction of a new highway between Trail and Castlegar. The Ministry obtained the strip by trading another piece of land it had conveniently acquired by expropriating part of an undeveloped property. The CPR agreed to the trade on condition that it could close a level crossing which provided one of two access routes to the remainder of the property owned by the man whose land had been expropriated.

The second access to the property was by way of the old highway. Shortly after the deal went through, a flooding creek washed out a culvert on the old road, the effect of which was to eliminate the remaining access route. The Ministry saw no point in replacing the culvert, as it no longer needed the road, and suggested that the landowner ask the CPR to re-open its level crossing. The railway, having just succeeded in getting rid of a crossing which it considered a nuisance, quickly rejected the Ministry's proposed solution.

As the landowner had no immediate plans to develop his property, he let matters sit for 20 years, until the Regional District of Central

Kootenay announced that it was including his property in its fringe development plans for a nearby city. At this point the landowner found himself with a dilemma. He had great plans to develop the property, but would-be investors backed off in a hurry when they found they were dealing with land with no access. The Ministry, however, insisted there was no reason why the washed-out highway should be restored until it was evident that public access was needed.

We discussed the matter with the Ministry, raising the point that, but for the Ministry's actions, the complainant would have two access routes to his property. The Ministry then agreed to make a commitment to restore the road once the complainant had submitted his development plans and it became evident that public access to the property would be required. In addition, to make provision for immediate access, the Ministry agreed to support the complainant's application to the CPR to reopen the level crossing temporarily, until the second access route was restored. (CS89-198)

One person's improvement another's nuisance

"You can't please everyone" is a truism government often faces when it does something for the common good and yet annoys people who may be adversely affected in the process. When they come to us, we frequently look for a compromise that may be simply achieved to the satisfaction of both the complainant and the government.

The widening of a highway in a mountainous resort area created a rock cliff on top of which was situated a townhouse project. The highway improvement enabled traffic to travel at higher speeds and in greater numbers, and the residents of the townhouses were not pleased about the increase in noise reverberating up the rock face. The ministry had created a nuisance, they argued, and the ministry should provide a remedy.

The ministry told us that, while it takes measures to reduce detrimental side-effects of road improvements when solutions are practical and reasonable, the topography of the site in this instance made it impossible to put in place sound-deflecting or sound-absorbing materials (such as fencing or shrubbery). However, ministry officials agreed to place a concrete 30-inch-high no-post barrier along the centre line of the highway. This achieved the desired effect of deflecting noise in a manner acceptable to the complainant. (CS89-199)

Buyers line up to bid on right-of-way

When the Ministry of Transportation and Highways sold an old right-of-way to the owner of an adjacent subdivision, some neighbours demanded to know why they hadn't been given a chance to bid on it.

We checked the relevant legislation and found that everything had been done properly. The Highway Act permits the sale of land in a right-of-way which has been discontinued and closed to either the former owner of the land or the owner of adjoining property. The purchaser in this case was both the former owner and the owner of the adjoining property. In addition, the notice of the intention to discontinue and close the right-of-way had been published, as required by the Act, for four consecutive weeks in a provincial newspaper. (CS89-200)

Long odds on appraisals matching to the penny

A family sold their lot in a subdivision to the Ministry of Transportation and Highways, which required the land for highway development. The lot contained an older mobile home - the family residence - and a small shed.

After the sale was completed, the family discovered that both appraisers involved - one acting for the Ministry and the other for the family - had arrived at identical appraisals of $26,000, which was lower than the (also identical) comparison sales used by the appraisers in assessing the value of the property. The family became suspicious that the appraisers had not worked independently and that the value set was too low. They told us the whole thing looked fishy and asked us to look into it.

Our investigation confirmed that both appraisers were members of the professional appraisers' organization. Both had used an approved approach to the evaluating process. The limited number of comparable sales - namely, modest,

older mobile homes - had led them to select identical properties in their search for comparable sales.

What differed was the weight each appraiser gave to individual factors. One emphasized the square footage of the mobile home and features such as double-glazed windows and an ensuite bathroom. The other placed emphasis on factors such as age of the dwelling and property size. After analyzing comparable sales, both made negative adjustments - one to a range of $24,000 to $26,000, the other to a range of $24,000 to $28,000. From those ranges, each drew on his own experience to arrive at an appraised value of $26,000.

While it is rare for independent appraisals to match exactly, we were convinced in this case that each appraiser had arrived at the same figure independently and fairly and that the value settled on was reasonable. (CS89-201)

Land-clearing produces dire consequences downstream

A property developer obtained from the Water Management Branch of the Ministry of Environment a licence to divert water away from land he was clearing for a subdivision. One of the potential consequences of redirecting the natural flow of water into new channels - and of the removal of forest growth - is an increase in the volume of surface water which under natural circumstances would dissipate into the air through evaporation or be absorbed over a wide area of ground.

In due course, a farmer who lived some distance downstream became the unwilling beneficiary of the increased runoff when flooding of a public road adjacent to the farmer's fields forced the Ministry of Transportation and Highways to replace a tiny wooden culvert that had served its purpose well for many years. The two new metal culverts that were installed in its place were so massive that the farmer could sit inside them with room to spare, and their effect was to flood the farmer's fields in a rather dramatic fashion during wet weather. The farmer's initial response was to blame the Ministry, and he approached us for assistance.

It was apparent to us that the Ministry was merely fulfilling a legal obligation created by a problem originating with the upstream development. Section 18 of the Water Act provides that anyone who has obtained a licence to divert water "shall exercise reasonable care to avoid damaging land, works, trees or other property, and shall make full compensation to the owners for damage or loss resulting from the construction, maintenance, use or operation of the licensee's works". Moreover, it appeared that the situation was likely to be exacerbated by further land-clearing planned by the developer.

We contacted officials from the Ministry of Transportation and Highways, the Water Management Branch, and the local regional district, and arranged to meet them at the farmer's property, where we viewed the area and discussed possible resolutions. The result was that the developer, in a most co-operative manner, agreed to hire an engineer to design a plan to regulate the volume and concentration of flow in the watercourse. The engineer's assessment revealed that the contours of the land across the road from the complainant were such that, with proper ditching and grading, a new watercourse could be constructed that would prevent water from flooding onto the farmer's land. In the result, the developer purchased this property, which conveniently was for sale, and, with the approval of the Water Management Branch, constructed the new watercourse, thus resolving the farmer's grievance and avoiding what might have proven to be a nasty lawsuit. (CS89-202)

Return of plum tree guarantees fruitful resolution

A couple purchased their home in 1988 from a woman who had, prior to the sale, received compensation for a piece of the property that had been taken by the Ministry of Transportation and Highways to accommodate construction of a new road.

At the time of the private sale the property had not been surveyed, so the altered boundary was not visibly evident. The survey was made by the Ministry during the summer of 1989, just prior to the beginning of construction. The couple then realized that their large backyard was to be substantially reduced in size. As well, there was to be a removal of shrubs, a large plum tree and a portion of fence, all of which had been

bought by the Ministry with the piece taken.

The couple asked that the Ministry replace the fence. They particularly wished to salvage the plum tree, which they had enjoyed now for more than a year. They also claimed that exposure due to loss of the shrubs would devalue their home beyond the amount of compensation paid by the Ministry to the previous owner and so, as further compensation, asked the Ministry to give them a small parcel of public land left adjacent to one end of their property.

It was clear that a document accompanying the offer of compensation to the previous owner set out the exact portion to be taken and indicated that improvements (namely the fence, tree and shrubs) were included. A copy was held by the seller and was available to the buyer at the time of sale.

The Ministry nonetheless responded by agreeing to transplant the plum tree (without guaranteeing its care or survival) and by replacing fencing.

We concluded that Ministry policy for disposition of unneeded public land at market value is in the public interest and would be appropriate in this situation. However, this portion of the issue would have to remain outstanding until completion of road construction. (CS89-203)

Truck slides off road, driver blames privatization

A man questioned the adequacy of road maintenance and clearing services provided by a privatized maintenance contractor in the Cariboo. Winter blizzard conditions, combined with variable temperatures, had produced "skating rink" conditions for most of the public roads in the area where the complainant resided. He told us he had been unable at one point to keep his four-wheel drive vehicle on the road while proceeding up a moderate incline, carefully straddling the crown of the road. He was also concerned for general public safety and, in particular, that of children travelling to school on buses.

While the complainant was concerned primarily with road conditions, his complaint was indirectly focused against the Ministry of Transportation and Highways, which, independent of any privatization initiative, still retains full responsibility for monitoring highway snow clearing and maintenance and for ensuring that the provisions of the contract under which private services are rendered are fully observed.

Upon investigation, it became apparent that the complainant's description of road conditions was reasonably accurate; however, it was not fair to infer from that fact alone that the Ministry was doing an inadequate job of monitoring and enforcement. In spite of considerable turnover in managerial staff at the district level following the retirement of the former district manager, the Ministry of Transportation and Highways had been doing a reasonable job of monitoring road conditions and ensuring that the contractor attended to dangerous conditions within the time periods stipulated in the contract. Unfortunately, there is always a time delay between the period of inadequate performance and the enforcement of remedial measures; this is the period during which accidents can occur. Our investigation revealed that the Ministry had in fact been "reading the riot act" to the private contractor. The Ministry, being of the view that the contractor had been duly warned, opted not to invoke contract termination provisions.

We closed this file with observations directed to the Ministry regarding the balancing of concerns relating to contract termination with the potential negative effects - and possible liability - that would follow a failure to terminate within the context of repeated contract violations. We remain of the view, which we believe is shared by the Ministry of Transportation and Highways, that public safety on provincial highways must be a paramount consideration. (CS89-204)

Road dust suppressants effective, but at what price?

A group of Cortes Island residents told us they were concerned about the use of sodium lignosulphonate as a dust suppressant on public roads. Lignosulphonate, the residents learned, is a generic term for a substance produced as a by-product of the sulfite pulping process, most commonly used in American pulp and paper mills. This is to be distinguished from the kraft process, where critical pulping chemicals are for the most part extracted and recycled. Lignosulphonate is formed after the lignin, which

is the binding wall of the cellulose fibre, has been broken down through the application of heat, pressure and an agent such as sodium, magnesium or calcium.

The complainants contended that lignosulphonate, as an industrial by-product, is produced in quantities too large to be disposed of at the point of manufacture without severe and highly visible environmental impact. They said that the search for practical applications for lignosulphonate resulted in the discovery that its adhesive qualities provided ideal ingredients for a useful, if short-lived, suppressant of road dust. The suppressant is, of course, sprayed on unpaved roads during dry months to minimize dust generation from traffic and to make roads safer for travel as well as less bothersome for residents living near these roads.

Some of the residents had launched an energetic program of research relating to lignosulphonate. They discovered that in a refined form it is approved for use as an adhesive binder in animal feed by the U.S. Food and Drug Administration, at volumetric concentrations of up to 4 percent. They also found that, although it is not regarded as a toxic substance, it has a high biological oxygen demand, meaning that when introduced to a body of water it strips dissolved oxygen from the water in large measure as it breaks down. This reduced oxygen concentration makes for what is known as "dead water", which is also deadly for aquatic plants and animals which depend on dissolved oxygen for their continued existence.

At the time of this report, the lignosulphonate investigation begun by our office in response to the Cortes residents' complaint remains in progress. We are continuing to assemble information from various sources with which it is contemplated that, although no definitive answers may be arrived at, some critical questions may be asked. These questions will likely relate to the extent of environmental testing in British Columbia of products that have been approved in other jurisdictions, and also the extent to which such impact testing may be justified if concerns are raised about the safety of the product by residents of British Columbia or other jurisdictions. (CS89-205)

Lowest bidder loses out

A bidder on a major highway construction contract considered it unfair that the Ministry of Transportation and Highways had awarded the contract to the lowest bidder - a corporation which, in the complainant's estimation, did not qualify for consideration under the clearly specified rules for bidders.

The complainant was also concerned about the Ministry's handling of the matter, as it seemed that the Ministry was contemplating a change in the bidding rules after the fact. Stringent insurance requirements had been set out as an essential part of the bid requirement, which the low bidder apparently had not met. However, some doubt had been cast by other bidders on whether or not this insurance was available in the marketplace at all. If the Ministry's requirements in that respect could be shown to be patently unreasonable, the bidding process as a whole might have had to be reconsidered.

The Ministry made available to us all documents relating to the bidding process and was most co-operative in showing that no determination of the successful bidder had been made at the time that the complainant originally approached our office; rather, an issue had been raised that required investigation by the Ministry. The Ministry's own investigation as to the availability of the necessary insurance vindicated the complainant's position, and it was determined conclusively that the low bid came from an unqualified source.

The matter was ultimately resolved when the contract was awarded to the complainant's firm. In the opinion of our office, a delicate and potentially litigious matter was handled sensibly by the Ministry, and a fair result was obtained in the end. The complainant was understandably pleased, and the file was closed. (CS89-206)

A dark and snowy night

A man complained that damage to his car had been caused by a piece of machinery that broke loose from a snowplow. It was a snowy night when the vehicles passed each other at a slow speed. The complainant was alarmed to hear a loud rumble under his car, and stopped immediately. He found he had run over what proved

to be the "toe" of a snowplow blade.

The complainant immediately drove to the local RCMP detachment, where the officer on duty radioed to a patrol car whose location at that moment happened to be in front of the snowplow. An inspection of the snowplow revealed that the toe of the blade was missing.

ICBC had refused the claim on the ground that negligence was absent. However, after we examined all factors, including legal issues involving the area of negligence, we suggested to ICBC that it reconsider the claim. It agreed to do so, and subsequently paid the claim. (CS89-207)

Road-widening project threatens to engulf waterfront lot

A citizen spent two years negotiating with the Ministry about a road-widening project, then complained to us. He contended that the project would consume an important area of a waterfront building lot and, as a result, would render the lot quite unattractive as a building site.

The result of our discussions with the Ministry on the matter was a realignment of the road in a manner that would accommodate the Ministry's requirements while greatly minimizing the property required. The projection was that a suitably constructed small retaining wall would only require the Ministry to enter the property temporarily to ensure a proper foundation for the wall. Any disturbance to the property would be corrected by the Ministry. (CS89-208)

Three years around the pole

A citizen complained that during the development of two adjacent building lots, an error caused a hydro pole to be positioned near the centre line of the complainant's driveway. This caused inconvenience and possible danger, as a vehicle had to be negotiated around the pole each time the driveway was used. Attempts to correct the situation over a three-year period had been unsuccessful.

The investigation revealed that a pre-development survey plan placed the existing pole in line with the properties' common boundary line. Development took place and, due to necessary safety concerns, the Ministry of Transportation and Highways directed where the access would be placed. That in itself was fair, but it was then discovered that the power pole was not aligned with the common boundary, but about five feet into the complainant's property and in the area where the driveway was placed.

It was also found that there had been an earlier agreement in principle between the Ministry and B.C. Hydro to relocate the pole, with the cost to be shared between Hydro and the Ministry. An oversight had left that undone. Our suggestion to reactivate the proposal was agreed to, and the three-year problem was resolved. (CS89-209)

Plea to spare hedge falls on deaf ears

A citizen accused the Ministry of cutting down a large hedge on private property. The hedge had been the subject of discussions between the Ministry and the property owner due to the Ministry's concern that its position on a corner lot presented a hazard to traffic. The Ministry wanted the hedge moved immediately; the property owner, having received advice that the mature hedge could not be transplanted with assurance of success until the fall (some months later) took no immediate action. Finally, Ministry staff cut down the hedge.

It was confirmed that while the frontage line was on a public right-of-way, the side hedge was on private property, its foliage spreading onto the right-of-way. The Ministry acknowledged responsibility for paying compensation for that part of the hedge that was rooted on private land. Negotiations were strained, but the Ministry's offer of $1,200 was deemed reasonable by our office. The offer was accepted. (CS89-210)

Boards, Commissions and Crown Corporations

British Columbia Assessment Authority

Resolved	4
Not resolved	-
Abandoned, withdrawn, nonjurisdictional	2
Not substantiated	8
Declined, discontinued	9
Inquiries	1
Total number of cases closed	24
Number of cases open December 31, 1989	1

Assessed value lowered, and eventually taxes too

In 1987, the complainant's property, which according to him consisted of a shack sitting on a tiny lot, was assessed at $20,000. Although he disagreed with the assessment, personal matters prevented him from appealing it that year. However, he did so in 1988, with the result that the court of revision reduced the 1988 assessment to $3,300 - $2,500 for the land and $800 for his home. Because the Assessment Authority had obviously made an error, the complainant was unwilling to pay the 1987 taxes, which amounted to some $400 plus interest. The B.C. Assessment Authority told him that now, in 1989, it was too late to do anything about an assessment that had taken place in 1987.

We contacted the Authority and asked it to write a letter to the Ministry of Finance and Corporate Relations, Property Taxation Branch, advising the Ministry of the correct assessment of this property for 1987. The Authority wrote to the tax collector, and as a result the Real Property Taxation Branch of the Ministry of Finance and Corporate Relations agreed to issue a revised tax bill, resulting in a reduced amount of taxes owing. (CS89-211)

British Columbia Buildings Corporation

Resolved	1
Not resolved	0
Abandoned, withdrawn, nonjurisdictional	2
Not substantiated	3
Declined, discontinued	0
Inquiries	0
Total number of cases closed	6
Number of cases open December 31, 1989	5

Public tender vs. tendering by invitation on large contracts

A man who worked with a full service insurance agency in Vancouver complained that tenders for the provision of comprehensive insurance services - including brokerage, coverage and fee negotiation, and claims management services - were being solicited by British Columbia Buildings Corporation on the basis of invitations to certain large agencies, rather than being put out to the market for bids by any interested individual or organization. The complainant's contention was based on his reasonable belief that services sought by either government ministries or Crown corporations, and involving the expenditure of public funds, should always be submitted to public tender.

Our investigation revealed that the sheer size and complexity of BCBC's operations throughout the province demanded services which could be provided only by a relatively small number of established organizations - often branch offices of national full service insurance agencies. We learned that BCBC required the services of an organization with ready access to international markets for the placement of over $1 billion in all risk property insurance, in addition to the acquisition of approximately $60 million worth of liability coverage.

Five firms were contacted by BCBC with requests to submit proposals for fees and scope of service, and it was illuminating to note that of these five firms only three chose to submit proposals. One of the firms that declined to submit a proposal cited a preparation cost in excess of $20,000 as one reason for its decision. BCBC also related that it had been told by another agency (not the existing insurer) that if BCBC was satisfied with the level of service and cost efficiency it had enjoyed to date, it should stay with the organization providing that service, partly due to the incredible logistics of switching the service contract, claims in process, and various data bases from one organization to another.

It was also noted that to a very real extent the insurance market is finite: an insurance corporation can only provide insurance coverage to a specific ratio relative to its asset base. Therefore the discontinuance of a relationship with one broker would simply free up the amount of coverage formerly held by BCBC, to be immediately acquired on the open market by the successor firm; within the expected variation in the costs of doing business, little difference could be expected in the overall cost to BCBC of acquiring coverage on the scope contemplated.

The complainant was also concerned about a rumour that BCBC's selection of a successor broker would be influenced by a technical consulting report for insurance services prepared by a company that was a subsidiary of the organization with which BCBC at that time did its major insurance business. Upon investigation, this rumour was confirmed, but only to the extent that a report was prepared. Review of the report showed that no firms were in fact recommended as part of the study; rather, the consulting firm looked at various insurance options and structuring ideas available to minimize risk exposure and obtain maximum value per premium dollar. It was seen that these recommendations would apply regardless of the insurance broker with whom BCBC ultimately dealt.

With respect to the complainant's central contention that the bidding should be open to all interested parties, we reviewed BCBC's argument that to follow such a process would be a logistical nightmare: very few companies would have the resources or contacts to provide the level of service expected by BCBC. The complainant took the view that such a contract

did not present an insurmountable hurdle for any experienced full service insurance agency, and additional staff would be hired if necessary. BCBC's view was that it wanted to deal with an organization that already had the service capability in place. In that respect, the field was demonstrably limited to the agencies BCBC chose to contact. BCBC also stated that this process kept costs under control, as an unlimited bid scenario would generate enormous costs with no accompanying benefit. We agreed, and the complainant was advised that his concerns, though understandable, could not be substantiated in this case. (CS89-212)

Tender information withheld

A roofer complained to us after his request for a specification package was refused by a British Columbia Buildings Corporation office because he was not a member of the Roofing Contractors' Association of B.C. (RCABC). He argued that the practice of placing restrictions on the issuance of such packages was unreasonable.

We learned that BCBC had designated valid RCABC membership as a condition of a qualified bid for the project in question in order to enjoy the benefit of the RCABC written guarantee covering the quality and durability of completed work. This was, in essence, the provision of an additional "insurance policy" safeguarding the proper expenditure of public funds. The complainant was concerned that the additional expense of RCABC membership reduced his ability to compete in the marketplace and that it carried with it an unwritten obligation to enter into other forms of membership in contractors' associations.

We did not investigate this latter aspect of the complainant's concerns, as they dealt primarily with the functioning of a private company in open markets. However, we did conclude that RCABC membership was a legitimate requirement imposed to ensure best value for public funds. The refusal to provide a tender package to individuals who would obviously not qualify for bid consideration seemed a reasonable corollary to this requirement, and on that basis we found the complaint not to be substantiated. (CS89-213)

Cleaning contract terminated, janitors barred from rebidding

Partners in a janitorial services business told us that B.C. Buildings Corporation had unfairly terminated their cleaning contract for a provincial government building on Vancouver Island. They alleged that the frequency of inspections of their cleaning performance had increased unreasonably and that unrealistic demands were being placed upon them, some of these demands not being included in the provisions of the contract under which their business was hired to perform services.

A preliminary review of relevant documentation provided to us by BCBC - including copies of the contract, inspection reports, warning letters, the termination notice and BCBC policy - made it apparent that all of BCBC's required procedures had been carefully followed and that the path to termination was reasonably predictable given the results of the cleaning inspection reports. The complainants were adamant that the inspection reports did not properly represent the standard of performance they had achieved on the job and that these reports were misleading and the contract administration in general was unfair, but they were unable to produce any documentation to corroborate their allegations.

The inspection reports - detailed documents in which the performance under each subheading was classified by way of an "x" placed in the appropriate box - did not lend themselves to further analysis. One could not "look behind" the inspection report to see the actual state of affairs that existed at the time of inspection. On the basis of the competing allegations between BCBC and the complainants and the weight of available evidence, we were unable to substantiate the complainants' concerns.

The complainants had an additional matter they wanted reviewed. Upon the termination of their contract, they were notified that they could not, as a business, bid on any BCBC janitorial contracts for one year. This prevented them from applying for renewal or participating in any competition for the other contracts which they performed for BCBC which would be expiring within the one-year period. These contracts would obviously go to another cleaning firm that might perform the services for a

long time if its performance was adequate to justify renewal of the contract without public tender. This would amount, for the complainants, to a permanent loss of a significant portion of their work. They considered this to be unfair and sought our opinion.

After considering the matter, we concluded that the exclusion of firms from a list of qualified bidders as a sanction for non-performance was reasonable and justifiable in BCBC's continuing efforts to ensure competent service and value for money. (CS89-214)

British Columbia Ferry Corporation

Resolved	3
Not resolved	-
Abandoned, withdrawn, nonjurisdictional	1
Not substantiated	7
Declined, discontinued	4
Inquiries	1
Total number of cases closed	16
Number of cases open December 31, 1989	3

Hard dock decks mint bike

An avid motorcyclist's pride and joy hit the deck when a mechanical failure caused a ferry to plow into a wharf at speed. A subsequent appraisal of the damaged bike arrived at a value far lower than that placed on it by the owner, who had restored the rare machine to mint condition — a fact which the appraisal was not calculated to take into account.

The B.C. Ferry Corporation accepted responsibility for the damage, but was reluctant pay more than it would cost to restore the motorcycle to its appraised value. Both sides had valid positions: the owner only wished his machine to be restored to its pre-accident condition, while the Corporation contended that the public interest would not allow payment beyond a generous figure for commercial value. The motorcycle owner lodged a complaint.

In arriving at its position, the Corporation had considered purchasing and reselling the motorcycle. There was merit to that process, except that the Corporation had neglected to consider the administrative cost of pursuing such an option, including the cost of collecting and storing the machine and advertising it for sale. When that figure was included, the price offered to the complainant was totally acceptable to him, and a mutually agreeable settlement was reached which closely approximated the amount originally asked by the complainant. (CS89-215)

No free ride on the ferry to wisdom

A mature student commuting from a small island to the mainland to attend classes put forward a spirited argument that her ferry passage should be free. She contended that, as society would reap the benefits of her increased knowledge once she graduated, society should make the path to learning a little easier when she was sacrificing income opportunities for the sake of an education. The one-way fare was one dollar.

The Ferry Corporation tariff schedule offers free passage to students on some routes, but only up to the age of 18. The same applies to people over 65 for certain routes on certain days. One might argue that such divisions are arbitrary, and in a sense they are — why pick 65 instead of 60? Should there be free rides for all mature students, when some mature students are millionaires? So are some people over 65 who get free ferry rides — and cheaper movie tickets.

The fact is that all manner of arbitrary lines are drawn by policy makers attempting to balance a government's need for income to run its services against the limited abilities of some to pay for those services. The slack created when one citizen gets a free ride has to be taken up by another who pays extra. The alternative to arbitrary division points — for instance, a means test for every ferry passenger — would be so costly and inefficient as to quickly undermine any social benefit to be gained.

The philosophical point raised by the complainant was one that arises many times in many contexts in concerns brought to our office. Each argument brought to us is reviewed on its own merits, and consideration is given to the reasonableness of each administrative policy that is questioned. In the case at hand, we were not prepared to recommend a free ride. (CS89-216)

What? No sidewalks on the ferries?

The letter was dated July 29, 1989, and read, "This is the anniversary of the first moonwalk — one giant step for man...." The relevance of this information became apparent when the writer went on to complain about another giant step — the one she was unable to negotiate in order to board buses on the ferries to Vancouver Island. A physical disability affected her

climbing skills, she added, and she wondered why on earth no one had thought to provide footstools for such occasions.

Although the Ombudsman's jurisdiction does not extend to investigations of the administration of private companies, we called the bus line to bring the complaint to its attention. Not surprisingly, other passengers had raised the issue with bus drivers on several occasions. The reason for the extra distance required to get onto a bus on a ferry was easily explained: buses are ordinarily boarded from sidewalks, and the height of the step is designed accordingly. A variety of footstools had already been tested, but the sturdy, compact model the company was looking for had not yet been found. Nevertheless, company officials were continuing their search and hoped to have a remedy shortly. (CS89-217)

Whaddaya mean I look under-age?

One of the advantages of growing older is the right to free rides on most B.C. Ferries sailings Monday through Thursday. Proof that you're 65 is your ticket to a Super, Natural experience — bald eagles soaring over Mount Galiano, the golden glow of arbutus trees in the setting sun, the bracing scent of the saltchuck, the line-ups....

A man who retired to the coast from another province to take advantage of these and other delights was less than pleased when a Ferry Corporation employee told him that only his Pharmacare card (now Gold Card) would be accepted as proof of his age. This the traveller could not produce, as he had been in B.C. less than the three months it takes for a Pharmacare card to be issued. Wouldn't a driver's licence do instead? Sorry, said the employee — rules are rules. Ridiculous, said the traveller — I'll call the Ombudsman.

So he did, and we called senior management at the corporation, and they said the information provided by the employee was incorrect. Apologies were proffered, and the complainant was assured that any standard form of identification showing his age and proving his B.C. residency would be quite acceptable in future to obtain his ticket to ride. (CS89-218)

B.C. Hydro and Power Authority

Resolved	27
Not resolved	-
Abandoned, withdrawn, nonjurisdictional	13
Not substantiated	26
Declined, discontinued	92
Inquiries	4
Total number of cases closed	162
Number of cases open December 31, 1989	25

In 1989 the overall number of complaints involving British Columbia Hydro that our office received was down from previous years, as was the amount of time spent investigating each of them. This was because of the introduction last year of the Regional Reviewer position in each of Hydro's four divisions. The Regional Reviewer was but one of the changes Hydro has made in response to the combined Hydro/Ombudsman study of Hydro collection practices that was extensively reported in our last year's Annual Report.

When a complaint is received by our office that involves some aspect of a Hydro collections matter, we first ensure that the person has exhausted any remedy that is available at the local office. If the local remedy does not work out to the satisfaction of the complainant, the complainant is advised to contact one of the four Regional Reviewers to attempt to resolve the issue. All of the four Regional Reviewers have either a toll-free number or will accept collect long-distance calls.

After suggesting to the complainant that he or she should try Hydro's internal review process, we advise the person that should he or she be unhappy with the resolution suggested by Hydro, they can call our office again. As in 1988, very few of the complainants ever called back.

In 1989 our office hosted a meeting with the Regional Reviewers and other Hydro staff to review how the appeal system was working. All participants agreed it was working well and needed little, if any, fine-tuning.

Also in 1989, another meeting took place with Hydro staff to iron out our joint procedures for handling non-collection complaints. It was agreed that in the future, when the Ombudsman receives a complaint that does not involve a collections matter, our office will initially contact the Area Manager of the area involved and attempt to sort out the issue at that level. Since implementing the scheme, we have found that only a small percentage of the complaints are not resolved by the Area Manager and have to be referred higher in the corporate structure of B.C. Hydro.

Finally, our office became involved in both a peripheral and direct fashion in the controversy surrounding the construction of a high-tension power line in the Courtenay/Comox area. There were concerns about the negative effects from the electro-magnetic field for persons living adjacent to the new line. The matter eventually led to public hearings conducted by the British Columbia Utilities Commission in Courtenay. The Commission concluded that there was no proven hazard to persons living along the line.

"Guaranteed" revenue scuttled by hard times

A general service customer signed a revenue deficit guarantee to obtain power for his mill. At the end of four years, the revenue received by B.C. Hydro was $433 short of the guaranteed amount. Hydro demanded payment of the shortfall, but the customer was unable to come up with the money and called us for assistance in the dispute.

The caller told us he had fallen on such hard times, primarily through illness, that he was now on income assistance. When we informed Hydro of the nature of the customer's problems, the corporation agreed to discuss a deferred payment scheme for repayment of the shortfall. (CS89-219)

A parting gift Dad could do without

A man was alarmed to find his hydro service disconnected because of arrears owing in his son's name. He told us his son had moved out of the house some months ago, leaving him with the hydro bill.

Following our intervention, B.C. Hydro was able to contact the son, who said he had moved out a couple of years ago and had no idea his father's service had been cut off. He paid the arrears owing, and the service was reconnected in the father's name. (CS89-220)

If it works, don't fix it

When a hydro crew came out to replace a fallen pole, they suggested to a neighbour that it would be a good idea for her to have her service reconnected from her own pole, which was rotting as well, to the new one. She was told the new pole would belong to B.C. Hydro and she would have no repair costs to worry about in the future. She agreed with the suggestion, but was not amused on receiving an unexpected bill for the installation of the new pole.

We contacted the local Hydro manager, expressing our concern not only that the woman had not been advised of the cost of the new pole and but also that the reconnection would not really have been necessary until her own pole needed replacement. In view of the fact that the complainant had apparently not been properly informed prior to accepting the hydro crew's suggestion, the corporation agreed to cancel the bill. (CS89-221)

Son comes to the rescue, pays mother's bill

An elderly woman living on her own in an isolated area had left her hydro bill unpaid for some time and was told her hydro was to be disconnected. As our office had previously made arrangements to have the woman's bills paid by the Ministry of Social Services and Housing when her payments had been in arrears, the B.C. Hydro collections officer asked us if we would intervene again.

We found out that our earlier resolution was now an impossibility, as the woman was no longer receiving income assistance. The Ministry of Health might have assisted her had she been receiving long-term care services, but this was not the case either. Finally we managed to contact the woman's son, who said he would help his mother pay the bill. This was done, and B.C. Hydro was provided with his name and telephone number for reference in case difficulties occurred again. (CS89-222)

Hydro disconnected, pipes freeze, owner pays

A woman who was unexpectedly called out of the province for a year to take care of an ill relative continued to make monthly payments to B.C. Hydro in the amount specified under the Equal Payment Plan. Misunderstanding how the plan works, the woman thought that the outstanding arrears incurred prior to establishing the EPP would somehow be absorbed on the EPP anniversary date. On that date, the amount of gas and electricity actually consumed is compared to the monthly amounts billed, and either a bill or a credit is issued against the account. However, late payments are not carried to the anniversary date.

B.C. Hydro disconnected the woman's hydro service after mailing a notice of disconnection to her residence and leaving two notices at her door. Unfortunately, the neighbour who had been collecting the woman's mail and forwarding it to her was away on vacation when the notices were sent.

During an ensuing cold spell a water pipe burst in the complainant's suite, causing some water damage. The woman maintained that B.C. Hydro had not provided her with adequate notice of disconnection and therefore should cover the cost of repairing the damage.

While we recognized that the complainant had faithfully paid her Hydro bills and genuinely believed the arrears would be "sorted out", we could not substantiate her contention that Hydro was responsible for the repair cost to her suite.

B.C. Hydro had not been informed that the customer was living out-of-province and acted on the reasonable assumption that someone was at the residence to receive the disconnection notices. Regrettable as it was that the woman was a victim of circumstance in regard to her neighbour's ill-timed holiday, it would have been unreasonable to place responsibility for the damage that followed on the shoulders of Hydro and its other customers. (CS89-223)

A costly failure to close an account

A man who sold his business neglected to cancel the Hydro account, which had been in his own name rather than the company name. When the new owner, who left the account in

the name of his predecessor, went out of business, he left a large bill outstanding. B.C. Hydro subsequently transferred the outstanding business account to the residential account of the person whose name it was in, according to the Authority's usual practice.

While it appeared the complainant had brought the problem upon himself, we expected B.C. Hydro at least to attempt to locate the party responsible for the actual consumption. B.C. Hydro did so, but without success.

After seeking legal advice on the matter, the complainant decided to enter into payment arrangements with B.C. Hydro. (CS89-224)

Avoiding the dreaded disconnection

We receive numerous complaints from people who, for a variety of reasons, are unable to pay their Hydro accounts and consequently face the threat of disconnection of their electrical service. The story described below is typical of many.

A single mother holding down two jobs received a disconnection notice from B.C. Hydro. She had no means to make a payment until she received her next paycheque, which would not be given to her until after Hydro's payment due date.

We referred the woman to the Regional Reviewer in her area, who agreed to a payment arrangement that would be satisfactory to both B.C. Hydro and the customer. (CS89-225)

Insurance Corporation of British Columbia

Resolved	228
Not resolved	-
Abandoned, withdrawn, nonjurisdictional	42
Not substantiated	15
Declined, discontinued	298
Inquiries	27
Total number of cases closed	610
Number of cases open December 31, 1989	74

1. Individual Complaints

In 1989, the volume of complaints handled against the Corporation was marginally higher than the 1988 figure.

In the 1988 Ombudsman's Annual Report we announced the implementation of a modified procedure for referring selected complaints directly to ICBC's Ombudsman Enquiries Unit for investigation and resolution. Throughout 1989 this procedure became firmly established as an effective means of handling about 60 percent of the complaints we received against the Corporation. (The remaining 40 percent of investigations were directed by our office, often with extensive assistance from the Ombudsman Enquiries Unit.)

Our standard referral notification letter includes an invitation to the complainant to call us back if the complaint is not addressed adequately by ICBC personnel. In fact, the need for further involvement from our office seldom arose. The written reports received by our office from ICBC on the results of all complaints referred indicated that the issues raised by complainants were given thorough and speedy attention. The success of this investigative process can be attributed both to the skill and professional experience of ICBC's Ombudsman Enquiries personnel and to the full support and participation of Corporation management at all levels.

The Ombudsman Enquiries Unit has demonstrated that the principles of administrative fairness can be incorporated explicitly in an internal complaint investigation process to the benefit of both the complainant and the authority.

The number of complaints received by our office probably represents a small percentage of the complaints and inquiries handled satisfactorily on a daily basis by management personnel throughout the Corporation, and by staff of the ICBC Public Enquiries Department, which handles general inquiries and complaints from the public. Most people who contact our office have already tried unsuccessfully to draw management's attention to their concerns or were unaware of the appropriate complaint and appeal avenues available.

Many of the following case summaries reflect the extent of ICBC's Ombudsman Enquiries Unit involvement in resolving customer complaints.

Deliberate damage double-billed

The complainant admitted to deliberately running her car into the side of her former common law husband's truck and agreed to pay ICBC's estimate of $1,231.75 for the repairs. Her ex-husband ordered additional repairs at the same time which were billed at nearly $1,200. When the truck was ready for release, the complainant paid the body shop directly for the exact amount of the ICBC estimate, which she knew she would have to pay at some point because of her deliberate act. However, her ex-husband did not have enough money for the extra repairs, so the body shop processed the ICBC claim.

Following ICBC's payment to the body shop, ICBC exercised its legal right to recover the amount of $1,231.75 from the complainant (since she had breached her policy by deliberately causing the damage). The complainant was unsuccessful in her efforts to convince ICBC that the body shop should have pursued her ex-husband for the balance of the account instead of processing the claim.

Our investigation indicated that the body shop had received the complainant's payment with the knowledge that this represented the full extent of her liability for the repairs. It was also

clear that the ICBC claim in the same amount had been processed to secure payment for the amount owed by the ex-husband.

Claim centre staff were initially reluctant to assist in resolving the matter because of a conflicting version of events reported by the body shop representative.

However, after we discussed the circumstances directly with the Claim Centre Manager, he agreed to meet with the body shop owner and the ex-husband who had readily acknowledged his responsibility for the balance of the repair costs. It was subsequently decided that ICBC would debit the body shop for the amount of the claim payment, that the ex-husband would make payment arrangements with the shop on his own, and that the complainant would not be billed for the $1,231.75 she had already paid to the body shop. (CS89-226)

Total loss compensation withheld

The complainant's custom-built recreational vehicle was totally destroyed in an accident caused by another driver. Since the complainant thought ICBC's settlement offer of $6,000 was unacceptably low, he initiated the Evaluation Procedure as described in section 62 of the Insurance (Motor Vehicle) Act Regulation. The complainant appointed an appraiser and properly notified ICBC, but ICBC neglected to appoint an appraiser on its behalf within the required 15-day time period.

Under such circumstances, the decision of the sole appraiser becomes final and binding on both parties upon serving proper notice. However, following the submission of the appraiser's report, which valued the vehicle at $10,200, the complainant did not receive his expected cheque. In fact, the complainant had tried unsuccessfully to secure ICBC's compliance with the Regulation for over two months before finally contacting our office for help.

After reconsidering the matter, the Claim Centre Manager acknowledged that the adjuster had erred in withholding payment and was mistaken in the belief that the complainant's appraiser had not followed proper notification procedure. By the time the complainant finally received his cheque, a full six months had passed from the date of the accident. (CS89-227)

Theft claims

Several individuals who complained that their theft or vandalism claims had been unfairly denied were referred to their court remedy after a review of ICBC's files revealed conflicting evidence or credibility questions which appeared to require judicial determination.

The following two investigation summaries illustrate that the apparent disappearance of a vehicle may not always warrant the initiation of a theft claim.

Vehicle stolen or lost?

One individual whose theft claim had been denied objected to ICBC's belief that he had simply forgotten where he had parked his vehicle. The complainant had reported his vehicle stolen from a large shopping mall parking lot with which he was unfamiliar.

After a thorough review of ICBC's claim file, and considering further details obtained from the RCMP, we agreed with the Corporation that there were insufficient grounds to recommend acceptance of the claim.

In fact, the complainant's apparently abandoned vehicle had been towed to a storage location for safe-keeping the day after the reported theft at the request of mall security personnel and the RCMP.

While the complainant eventually recovered his vehicle in the same condition in which he had left it, he did incur vehicle rental costs for the several days it took to receive information from the RCMP on his vehicle's recovery.

Since it appeared that the RCMP detachment might have failed to advise the complainant that his car had been located when he phoned for information just prior to arranging a rental, he was referred to the RCMP with his claim for rental costs. Informal communication between our office and the RCMP detatchment suggested that the complainant's claim would be seriously considered. (CS89-228)

Vehicle "disappears" in police procedure

The complainant reported his car stolen from a downtown Victoria parking lot. With ICBC's approval the complainant rented a car for $450 for a one-month waiting period to see if the car

turned up, after which ICBC gave the complainant a settlement cheque of $5,320. However, when the car was found in the storage compound the next day, ICBC stopped payment on the cheque and refused to reimburse the complainant for his out-of-pocket rental expenses of $450.

Our investigation revealed that the complainant's vehicle had actually been towed from the parking lot because it was improperly parked. It appeared that the problem would not have arisen had the local police department correctly advised the complainant at the outset to call the towing company responsible for the lot before initiating a theft complaint. The police department also acknowledged a breakdown in the procedure for linking towing company notifications with stolen vehicle reports.

With the expectation that ICBC could seek reimbursement from the police department, a cheque for $450 was issued immediately to cover the complainant's rental costs. The complainant agreed to pay the towing fee of $35 and the storage charge of $5 per day for the four days prior to the towing company's abandoned-vehicle notification to the police, while the police agreed to pay the balance of the storage charges. (CS89-229)

Centre Manager resolves Catch 22

An insurance agent contacted our office on behalf of an elderly customer whose vehicle had been damaged by fire. ICBC had refused to open a claim file until the vehicle registration papers were corrected to show that it was a 1951 and not a 1956 model.

The agent confirmed that a Motor Vehicle Department representative would change the vehicle registration if the vehicle were brought to the department office. Unfortunately, the vehicle could not be driven because of the fire damage, and the representative apparently declined a request to visit the vehicle a few blocks away. The Motor Vehicle Department also refused to consider the agent's photographs and inspection notes indicating that such details should come from the RCMP. The owner of the vehicle was reportedly enraged by this "red tape", and the agent had run out of ideas.

At our request, the Manager of ICBC's Ombudsman Enquiries Division reviewed the circumstances with the Claim Centre Manager, who readily agreed that the customer should not have been turned away at the door. The Claim Centre Manager immediately contacted the agent and arranged to have the customer's vehicle towed to the Motor Vehicle Department for inspection and then to the ICBC Claim Centre for a repair estimate and resolution of the claim. According to the agent, the customer was pleased by the improvement in service. (CS89-230)

Responsibility for debt disputed

Some complainants are near defeat by the time they contact our office and may need encouragement to pursue their concerns. A woman who had been pursued by the Collections Department for a $100 finance plan debt dating from 1982 was willing to pay the bill just to get the Corporation "off her back". The complainant stated that ICBC did not believe or investigate her assertions that her ex-husband had forged her name on the finance documents.

Our investigation of the vehicle registration and transfer documents strongly supported the complainant's contention that she should not have been held responsible for the debt.

It was also discovered that the current collection action was based on a possible clerical error which showed that the complainant had paid $5 on the account in 1984. The Collections Supervisor concluded that, notwithstanding the question of the complainant's responsibility for the account, the Corporation was statute-barred from continuing collection action. The complainant was sent a written confirmation and an apology, which were gratefully received. (CS89-231)

Son damages car, father refuses to pay

The complainant's vehicle was involved in an accident while being driven by his son. His son was held 100 percent liable, and the other party's damage claim was paid. However, since claim centre staff had concluded that the complainant was in breach of his policy, recovery action was commenced against both the complainant and his son.

The son's lawyer negotiated an agreement to reimburse the Corporation $1,000 as his share of the debt, but the complainant continued to

deny that there had been a breach and refused to pay his share.

ICBC's Ombudsman Enquiries Officer reviewed the claim centre's file and concluded that there was insufficient evidence to support the allegation that the vehicle was actually owned by his son and that the complainant had permitted the vehicle to be registered in his name to benefit from a higher discount.

The Enquiries Officer found that: the vehicle had always been registered to the complainant; no statement had been obtained from the complainant concerning the actual ownership of the vehicle; there was no evidence to support the claim centre's position the the vehicle had been purchased or was otherwise "owned" by the complainant's son; and there was no concrete information on file to suggest misrepresentation by the complainant, let alone a policy breach.

On the strength of this investigation, ICBC's Corporate Law Department and the Collections Department agreed that recovery action against the complainant should be abandoned and that the complainant's son's $1,000 payment should be returned with an appropriate explanatory letter. (CS89-232)

Recovery action discontinued

ICBC paid a $4,000 bodily injury claim to a person whose hand was crushed between the bumpers of the car he had purchased and the complainant's truck, which was being used for a push-start. Since the complainant's truck was uninsured, ICBC paid the claim from the uninsured motorist fund and sought recovery from the complainant.

In spite of the complainant's denial of liability for the accident, collection action was pursued. A review of the circumstances revealed that the accident occurred not on a "highway" but on a private vacant lot. It was also confirmed that the complainant had not been notified of the Corporation's liability assessment prior to the settlement, as required by section 19 of the Insurance (Motor Vehicle) Act.

On the strength of these findings, collection action was abandoned, an apology was offered to the complainant, and the adjuster was counselled on correct procedures. (CS89-233)

Repairs cost 200% more than estimate

The complainant had admitted that he damaged a man's motorcycle while backing up in April 1988. The damage estimate was about $400 at the time but when the man had his motorcycle re-inspected and repaired seven months later, the bill came to $1,167.89. The complainant was unsuccessful in his efforts to convince the Material Damage Supervisor that the other party's claim should be investigated.

ICBC's Ombudsman Enquiries Officer reviewed the claim file and concluded that the second estimator should have consulted the original estimator and should not have assumed that the additional damage was related to the first accident. It was also concluded that the Material Damage Supervisor should have investigated the complainant's concerns more thoroughly. As a result, the Claims Review Committee agreed that the complainant could retain his Claim Rated-Scale position by reimbursing the Corporation the amount of the original damage estimate of $400. (CS89-234)

Disability benefits reinstated

A young man who sustained serious head injuries in a near-fatal accident in 1982 complained that ICBC had terminated his total disability benefits in the mistaken belief that he was now capable of working. He apparently suffers from a permanent memory loss problem which affects his ability to concentrate on the simplest of tasks and, as a result, has not been able to keep a job.

Our investigation showed that the complainant was living with his mother, who had been receiving the disability benefits on his behalf as his committee. It appeared that benefits were terminated because his mother had not been cooperating with ICBC's efforts to develop a rehabilitation program.

In reconsidering the Corporation's position, the Rehabilitation Department decided to reinstate the benefits on condition that the complainant's mother no longer function as committee and that payments be made directly to the Public Trustee. The Rehabilitation Department concluded that it would be in the complainant's long-term interests to assist him

in the development of greater self-reliance skills. The complainant's mother was informed accordingly. (CS89-235)

Time limitation waived

The complainant's son was injured in an accident in 1979 while he was still a minor. A settlement was reached the following year, and the complainant was under the impression that future medical bills related to these injuries would be paid if and when they came to hand.

However, when the complainant contacted the claim centre for further dental work in 1987, he was advised that he was out of time and that the claim file could not be reopened.

The Ombudsman Enquiries Officer reviewed the file in detail with the help of the Claim Centre Manager, and both agreed that the complainant had not been properly notified at the time of the settlement about the limits to accident benefits coverage. Furthermore, it appeared that the Public Trustee had not sought clarification of the complainant's son's entitlement to future dental treatment. It was evident from the initial dental report that future dental care would definitely be required.

On the strength of these considerations, the Claim Centre Manager authorized payment for the additional dental treatment. (CS89-236)

Other examples of the types of complaints against ICBC that we investigated may be summarized more briefly.

Rehabilitation assessment

The Rehabilitation Department agreed to fund a physical capacity assessment, including an identification of accident-related disabilities, for a woman whose request for retraining had been denied by a claim centre. (CS89-237)

Borderline case

ICBC had denied the complainant's two recent material damage claims and declared his policy void because he was an Alberta resident and should have been insured in that province. Following consultations with ICBC and the Motor Vehicle Department, it was agreed that the complainant's claims would be allowed and that he could continue to register and insure his vehicles in British Columbia since his rented home was on a farm that straddled the Alberta-B.C. border. (CS89-238)

Unexpected benefits

An elderly complainant who had claimed a handicapped discount on both of his family vehicles complained when he received an underpayment billing notice for $87. Although ICBC's Ombudsman Enquiries Officer informed the complainant that he was only entitled to claim the discount on one vehicle, his review also revealed the complainant's entitlement to an $81 refund because he had insured his vehicle in a higher rate class than necessary. (CS89-239)

Excusable omission

A woman's claim under the Unidentified Motorist Fund was denied because she had failed to obtain the identification of the offending motorist at the scene of the accident. The claim was accepted after a review revealed that the complainant probably would have obtained the necessary information had the police not attended the scene and taken complete charge of the situation immediately following the accident. (CS89-240)

Settlement offer revived

A woman who tried to collect on an earlier ICBC offer to pay 75 percent of the cost of her vehicle repairs was told by the Claim Centre that her two-year time limit to pursue her claim had expired. The Ombudsman Enquiries Officer was successful in persuading representatives of the Underwriting Department and the Discount Review Committee that the claim should be paid on the grounds that the complainant had never been properly advised of the applicable time limit. (CS89-241)

Communication ignored

A U.S.A. resident whose car was damaged by a visitor from British Columbia complained that ICBC had failed to respond to his two registered letters and telephone messages. After confirming that the complainant's unanswered letters were on file, the Ombudsman Enquiries Officer recommended that the Corporation retain an independent adjuster in California to facilitate a settlement directly with the complainant. (CS89-242)

2. Systemic Sources of Administrative Unfairness

In our 1988 Annual Report we reported that the President of ICBC had endorsed the establishment of an internal administrative fairness review process within the Public Enquiries Department. During 1989 a process was developed to analyze the underlying causes of complaints received by the Ombudsman's office and ICBC's Public Enquiries Department and to develop the most effective means of rectifying the problems identified.

The focal point of this process has been the Ombudsman-ICBC Roundtable meetings between representatives of our office and managers of ICBC's Public Enquiries Department and other departments from time to time as required by the agenda. Roundtable meetings provide an arena for setting priorities and formulating specific action plans. The minutes of these meetings are circulated among the senior managers of the Corporation to ensure the participation of all departments that may be affected by any proposed change in corporate policy or procedure.

This process resulted in the resolution of three administrative fairness issues during the year. Each of the resolutions summarized below involved amendments to the Insurance (Motor Vehicle) Act Regulation effective January 1, 1990.

1. Penalty Point Premiums. It was observed that delays of various lengths in recording offences with the Motor Vehicle Department could affect the amount of a Penalty Point Premium, with the result that drivers with the same birth dates and offence histories could receive bills of different amounts. A statistical analysis of ICBC's penalty point data base showed that the problem could be largely resolved by starting the 12-month scan period 17 months prior to the driver's birthday, instead of the existing 14 months, to allow for recording and processing time. The Regulation was amended accordingly, and information on customer bills was clarified. The result should be a significant reduction in the volume of complaints received in this area through 1990.
2. Claim Rated Scale. Normally the owner of a vehicle bears the impact of a loss of discount on the Claim Rated Scale if a claim payment is made against the vehicle's policy, even where the vehicle was driven by another person. However, if the owner ceased to hold a policy with the Corporation while the loss of discount was still in effect, and if the vehicle had been operated at the time of the accident by another person who subsequently applied for a new plate policy, the Corporation made a practice of "transferring" the loss of discount to the operator's new policy. In reviewing the circumstances of several complainants, it was noted that the existing Regulation did not clearly authorize this practice. The Underwriting Department acknowledged the problem and clarified the Corporation's intentions underlying the Claim Rated Scale provisions by reorganizing, and partly rewriting, the appropriate sections of the Regulation. A manual review process was also implemented to weed out problem files in advance to replace the previous practice of "trial billings" which had placed the onus on customers to report errors. No further complaints have been received in this area since these changes were implemented.
3. Repairs. Complainants frequently blame ICBC for incomplete or poor quality repairs, and some have been confused about the extent of ICBC's responsibility for ensuring customer satisfaction in this regard. A reading of the Regulation clearly indicated that the Corporation might be held directly responsible for the quality of repairs, whereas written policy and procedure on the topic emphasized that such matters should be resolved directly between insureds and their chosen repair facility. In practice, the Corporation has routinely assisted customers to resolve communication problems with repair shops while denying any legal obligation to do so. Representatives of the Corporate Law Department and the Manager of Material Damage Quality Control agreed that the wording of the Regulation did not reflect the current intentions and policy of the Corporation. The resulting amendments to the

Regulation clarify that the Corporation does not actually repair or replace vehicles in whole or in part and does not guarantee the quality of the repairs performed by a garage service.

B.C. Lottery Corporation

Sales to minors discouraged by tightened rules

We received a letter from a lawyer outlining a client's concern about the Lottery Corporation's lack of rules or policies prohibiting the sale of lottery tickets to minors under the age of 16.

We asked the B.C. Lottery Corporation to forward to us all the available documentation relevant to the complaint. The information we received indicated that decals were mailed to all retailers stating, "We do not sell lottery tickets to anyone who appears to be under the age of sixteen years". Retailers had been advised to post the notices on the machines or in a conspicuous location. On-line messages had also been relayed to retailers stating, "You are reminded again that your lottery contract does not permit you to sell tickets to persons who appear to be under the age of sixteen".

We noted that neither the Corporation's rules and regulations nor the retailer agreement prohibited the sale of tickets to minors. We recommended to the Corporation that the rules and regulations or retailer's agreement be amended to include a section prohibiting the sale of tickets to minors under the age of 16. A spokesman for the Corporation informed us that the retailer agreement would be amended so that, under the terms of the agreement, failure to abide by the provision would give the Corporation cause for terminating the agreement.

The Corporation permits persons who are 16 to 19 years of age to purchase a lottery ticket, but prizes over $1,000 must be paid to the Public Trustee to be held in trust for the youth. Prizes less than that amount are to be paid to the parent or legal guardian.

We believe the steps taken by the Lottery Corporation to inform the public, together with amendments to the retailer agreement, provided a satisfactory resolution to the matter. (CS89-243)

B.C. Railway Company

Resolved	0
Not resolved	0
Abandoned, withdrawn, nonjurisdictional	2
Not substantiated	1
Declined, discontinued	4
Inquiries	0
Total number of cases closed	7
Number of cases open December 31, 1989	2

Fight for return of property successful but expensive

The complainant's property had been expropriated by a government authority over 20 years ago. In 1982 the property was returned to him, subject to certain conditions. Subsequently he contacted this office, maintaining that he should be reimbursed for the expenses he had incurred as a result of his efforts to have his property returned.

B.C. Railway was the successor by statute of certain obligations of the expropriating authority. A report reviewing the circumstances of the expropriation and suggesting an appropriate settlement was sent by this office to B.C. Railway, which responded favourably by offering the complainant a cheque for $46,342.55 if he would sign a document releasing B.C. Railway from any future claims by the complainant.

On March 9, 1989, B.C. Railway sent the cheque and copies of the release to this office. We undertook not to deliver the cheque to the complainant until he had completed the release and returned it to this office. We asked the complainant to obtain independent legal advice before signing the release.

This office was subsequently contacted by the complainant's lawyer, who informed us that he was attempting to remove some of the conditions in the 1982 agreement by which the complainant's property had been returned to him. On June 13, 1989, we informed the complainant's lawyer that this office would hold the cheque for only another two weeks and then return it to B.C. Railway.

On June 28, 1989, we returned the cheque to B.C. Railway and so informed the complainant. At that point we closed his complaint as not substantiated, because we thought that B.C. Railway's offer had been eminently fair. On November 14, 1989, we were informed by B.C. Railway that the complainant had recently signed the release and accepted the cheque. (CS89-244)

Workers' Compensation Board

Resolved	181
Not resolved	1
Abandoned, withdrawn, nonjurisdictional	52
Not substantiated	11
Declined, discontinued	419
Inquiries	92
Total number of cases closed	756
Number of cases open December 31, 1989	98

Last year we reported that the main focus of our relationship with the Workers' Compensation Board during 1988 was that of improving communication and understanding between our offices. An example of a co-operative approach towards our common objectives was a new initiative in the handling of complaints concerning delay and inadequate communication between adjudication staff and claimants. Last year the Board and this office addressed this issue by monitoring and analyzing such complaints over a period of time. As a result, the Board issued a directive to its staff concerning "customer service".

Following the issuance of this directive, we continued to monitor such complaints. Subsequently we had further discussions with our Board liaison person regarding the possibility of a referral system whereby such complaints to us would be initially handled by the Board. This proposal was consistent with our commitment to encourage authorities to handle as many of their own complaints as possible, leaving the Ombudsman's office to deal primarily with individual cases where all other reasonable avenues of review have been exhausted. Further, it is the goal of this office to support authorities in the development of their own internal capacity to conduct systematic reviews of the fairness of their own laws, policies, procedures and practices.

After consultation with this office, the Workers' Compensation Board established a system beginning June 1, 1989, whereby most complaints involving a delay in service or lack of communication are referred by this office directly to the Board. The complaints are faxed to the appropriate Manager for investigation and resolution. These complaints over a four-month period were monitored and analyzed by the Board in order to identify areas that required management initiatives such as training, policy clarification or review. The Board will be continuing to analyze complaints on a quarterly basis with a view to identifying trends, the underlying causes of the complaints, and the corrective measures required to prevent future problems.

This method of dealing with these types of complaints provides the Board with a forum for quality assessment that both our offices have found to be effective and efficient. The complaints are usually resolved quickly with personal contact from the Manager. If the complainant is not satisfied with the response received, he or she is advised to let us know. In this way, we can also monitor any problems as they arise.

Another improvement initiated by the Board, with our advice, is a new form letter sent out to a claimant whose file has been referred to the Disability Awards Department for consideration of pension entitlement. A number of delay complaints we received involved the Disability Awards Department. We found that often the worker did not know that his file had been referred, how long this process would take, or who was now responsible for his file. The new form letter addresses these and other questions in a positive manner and is an excellent example of a constructive approach towards quality customer service.

As well as establishing a new communication protocol with the Board regarding individual or systemic problems, we also hosted a meeting regarding the co-ordination of administrative fairness investigations. Participants included representatives from several of the major provincial authorities, including the Workers' Compensation Board and the Criminal Injury Compensation Program. The meeting provided an opportunity for participants to share their experiences with the various complaint handling systems currently in use. We found among the participants a diversity as well as a commonality of attitudes towards complaints and meth-

ods of complaint handling. We hope that the information shared and contacts made at that meeting will help identify and resolve the root causes of recurring individual complaints. One participant made the point that in dealing with public inquiries, one should look beyond the immediate problem presented by the caller and ask why that person felt the need to call.

Field Investigation

During 1989, we initiated an investigation into the Board's field investigation policy and procedures. We recognize the right and duty of the Workers' Compensation Board to investigate matters fully. However, the jurisdiction of the Workers' Compensation Board and the wide powers of investigation must be balanced against the right to privacy of the individual, members of his or her family, and acquaintances of the claimant. Our office produced a discussion paper suggesting that guidelines be introduced as a general reference to assist when determining whether a field investigation should be initiated and the manner in which it should be conducted. The Board agreed to set up a committee to establish guidelines and objectives for the Field Investigation Unit, and will take the lead in establishing protocol with other agencies.

Allergic sensitivities

Last year we reported that we had received the Board's report of its policy review concerning the question of compensation for allergic sensitivity and that we had met with the then Deputy Minister of Labour and Consumer Services and with senior Workers' Compensation Board officials concerning this issue. We reported - hopefully - that this longstanding issue now seemed about to be resolved.

The issue is whether workers who are forced to seek alternative employment as a result of a reactive industrial disease or allergy should be assessed for disability pensions on the basis of their loss of earnings. With repeated exposure to certain industrial substances, an individual may become prone to respond more and more severely to lower and lower doses, and is then said to have developed an allergy. What may ultimately occur is a permanent change to the individual's immune system. A worker may follow medical advice and decide against continuing exposure to offending industrial substances so as to avoid the possibility of permanent damage.

The Board, in these cases, characterizes the worker's absence from work as "preventative", and its policy is that compensation is payable only for disability and not for the cost of preventive measures to avoid disability. The Board does not recognize the resulting impairment of earning capacity as a permanent disability. The Board will assist these workers with rehabilitation, but if this assistance is unsuccessful, impossible, or results in a job paying a lower salary, the worker will not be compensated for his or her financial loss. Workers with no other training and no compensation can be, in effect, encouraged to return to their work place containing the offending substance. We believe that this approach does not fulfil the purpose of workers' compensation, as it does not compensate a worker for earnings loss and has the effect of increasing rather than reducing the frequency and severity of the reaction.

Unfortunately, this issue still remains unresolved despite ongoing communication between this office and the Workers' Compensation Board since 1981.

A meeting took place between officials of the Board, the Ministry of Labour and Consumer Services and this office in February 1989. At that time the Board was prepared to develop a working policy. It was agreed that a limited policy be developed initially pending the establishment of a new WCB Board of Governors. It was further agreed that there was no legal bar to the two claims in question. The policy was to be developed within 90 days - a period later extended by a further 30 days.

While the Board indeed developed a draft proposal for compensating allergies, concern was then expressed that Board policy could not be changed, even on a restrictive basis, in advance of the appointment of the new Board of Governors. Without such change, it was argued, no compensation could be paid to the two workers whose complaints had initiated our recommendations on this issue and were reported in the Ombudsman's reports to the Legislature in 1984 and 1985. It had been recommended in these reports that the two workers be assessed for pensions.

We suggested that an option would be to pay the two workers as an exception to present policy but in recognition of the Board's agreement that the policy should be changed, the fact that the complaints have been longstanding, and the complainants' advanced ages and failing health, and that the Board present its suggested policy changes to the Board of Governors for its consideration. The Board's response was that there could be no policy changes pending the appointment of the Board of Governors and that without a change in policy the Board could not pay. For the first time, it was now argued that the two workers were not the ideal candidates upon which to base a policy change.

We questioned on what basis the Board had changed its position from agreeing that a working policy (albeit a limited one) on compensating allergies could and would be developed by the Board pending the appointment of the Board of Governors, to its decision that there could not and will not be any policy changes pending the appointment of the Board of Governors. The Board responded that the changed approach reflected a change in circumstances. The change was, first, that the public commitment that there would be no change to Board policy prior to the appointment of the Board of Governors had solidified. It was stated that the Legislature's intent was that Board policy be considered by the Board of Governors and that this was crystallized by Bill 27 being given royal assent on June 28, 1989. It was further stated that it became increasingly clear with the passage of time that the Board, as it is currently constituted, should not pre-empt this consideration. Secondly, the Board was unable to identify any way to pay compensation to the two workers without a policy change.

The two workers who complained to us and all other affected workers will now have to await consideration of this issue once again by the new Board of Governors, which may not be constituted until late 1990. Whatever the results of that consideration may be, it remains to be seen whether these two men or others in similar circumstances are still alive to benefit from any change that may occur. In these cases, justice delayed may be justice seriously denied.

Hand injury ends meat-cutting career

A meat cutter injured his right hand in 1976. In 1979 he was found to have a permanent partial disability to his right hand and was granted an award of 9 percent of total disability. He terminated his employment with the successor to his accident employer in October 1982 and then went on to work as a meat cutter for another employer with no loss of earnings. After eight months with his new employer, he found himself unable to continue his occupation as a meat cutter - which had been his trade for the past 23 years - due to ever increasing problems with his wrist because of exposure to cold.

Following the cessation of his work, he applied to the Workers' Compensation Board for a re-opening of his claim. A re-opening was refused and no change was made to the pension on the ground that there was no objective change in the hand condition. The worker appealed those decisions to a Board of Review, which dismissed his appeal. However, they concluded that he should not work as a meat cutter because of the unusual cold attached to that particular occupation and strongly recommended that serious consideration be given to retraining of the claimant for suitable employment.

The Workers' Compensation Board acted on the recommendation of the Board of Review. The Board agreed to contribute $6,500 towards the cost of educational upgrading in the form of a two-year business course at a local college. The worker embarked upon that course but did not complete it. The balance of the training allowance was then expended on on-the-job training as a salesman with a small company. This job paid significantly less than his occupation as a meat cutter.

The matter ended up before the Commissioners in the form of an appeal from the earlier Board of Review decision. The basis of the appeal was that the worker was entitled either to further rehabilitation assistance or, alternatively, to a pension implemented on a loss of earnings basis. The appeal was dismissed.

The worker complained to this office. Although we were unable to substantiate the rehabilitation issue, we considered the Board to have erred with respect to the pension issue. Although the

Board of Review concluded from the evidence that the worker should not work as a meat cutter, it failed to consider what effect that would have on his earnings and the assessment of his pension. We proposed to the Commissioners that the worker's case be reconsidered.

Initially, the Commissioners responded that while the worker was employed by the accident employer, meat cutting was done in a room temperature environment. Therefore the cold atmosphere to which the Board of Review referred did not exist at the previous facility. The Commissioners maintained that the worker's loss of earnings was due to his leaving a "warm" working environment for a "cold" environment, which he then had to quit. It was argued that the worker's reduction in income had therefore resulted from his personal choice and preference rather than from the residual effects of his compensable injury.

We pointed out that although the meat preparation room at the accident employer was at room temperature, meat and related products were worked by hand, and while they were being worked at room temperatures, the temperature of the product was at a low temperature (likely the temperature at which they were being stored in the cooler or freezer). We also felt that the fact that he changed his employer, but not his profession, with no loss of earnings, should not now be used against him. It had been a reasonable decision at the time, and we felt it was unreasonable to expect the worker to predict that he would find it impossible to continue in his profession. We questioned why, if the Rehabilitation Department believed that the worker could have done another meat cutting job, money was spent on retraining the worker for another occupation rather than helping him to find another meat cutting job in a warm environment.

We were of the view that the evidence supported only the conclusion that the worker ceased to work as a meat cutter as a direct result of his compensable injury. He simply could not carry on. The Board claims adjudicator had found him extremely straightforward, not prone to exaggeration, and a stoic individual. The worker's reason for quitting was that his pain and discomfort had progressed to a degree he could tolerate no longer. The day that he could take no more would have come whether he was employed as a meat cutter by the original or subsequent employer. We recommended that the worker's pension be assessed on a loss-of-earnings basis.

The Commissioners then decided to request that an investigation be conducted into the general working conditions associated with the occupation of meat cutting to assist them in the consideration of the matters raised in this case. After the completion of this investigation, the Commissioners were unable to agree that the worker's pension should be determined on a loss-of-earnings basis. In their opinion, the worker had not, by reason of his 1976 compensable injury, been precluded from continuing in his occupation as meat cutter. They agreed that section 23(3) of the Workers Compensation Act directed the Board to have regard to "the worker's fitness to continue in the *occupation* in which he was injured or to adapt himself to some other suitable employment or business" [emphasis added]. Thus, the consideration was to focus on the occupation as a whole rather than on a specific job within that occupation. They agreed that undue emphasis should therefore not be placed on the worker's reason for leaving the accident employer.

Although we had pointed out that the worker's continued employment as a meat cutter demonstrated his perseverance and determination, in the Commissioners' opinion it was significant that the worker did not find it necessary to seek medical treatment for his wrist while employed at the accident employer's store. There was a gap in medical reports on his claim file for a three-year period, and the Commissioners felt that had he had problems with cold, including frozen products, during that period, he would have consulted his physician. During this time the worker made few complaints to his co-workers about experiencing pain from cold. The worker resumed seeking medical treatment five months after he began working for the second employer, and left this employer three months after resuming medical treatment. The Commissioners found that these two events were too closely correlated in time for there not to be a connection between the particular job and his renewed complaints of pain from cold.

The Commissioners stated that the significant difference between the two stores was the

temperature of the work environment. The field investigator's report indicated that, when assessed in terms of "cold", the environments in which meat cutters' work fall generally into two categories. The first store typified the "non-air conditioned" or "non- refrigerated" environment; the second typified the "air conditioned" or "refrigerated" environment. The Commissioners considered that, if the worker did experience increased pain from the cold at the second store, the increase was temporary and resulted from the increased cold in that particular type of environment.

The Commissioners concluded that the worker could have continued to work at jobs in non-air-conditioned or non-refrigerated work environments. They were satisfied that a sufficient number of stores had the non-air-conditioned or non-refrigerated work environment that the worker could have remained employed in the occupation had he so chosen to do so.

For that reason the Commissioners did not accept this office's recommendation, as they did not consider that the worker had lost his occupation of meat cutter by reason of his compensable injury. We continue to believe that he did. (CS8 -245)

The fairness of claims authentication procedures

The task of balancing an individual's right to privacy against the Workers' Compensation Board's responsibility to ensure the authenticity of claims can be a difficult one. Over the years a number of complaints about field investigation practices, in addition to our own concerns about the quality of some investigations, led to an Ombudsman-initiated investigation respecting this issue.

Our investigation resulted in a discussion paper that presented a number of suggestions to the Board with respect to the exchange of information among governmental agencies, legal aspects of the release of information, objectivity and tone in reporting, adherence to the principle of the presumption of innocence, the implications of the use of criminal record checks, the establishment of a protocol with the Workers' Compensation Review Board for field investigations done while a claim is under appeal, and procedures used by other agencies utilizing field investigations.

The paper focused on the need to establish criteria for determining when a field investigation should be initiated, clear definitions and parameters with respect to particular information required, and quality control of investigations and the reports put on a claimant's file.

Having reviewed our discussion paper, the Board set up a committee to study the role of the field investigation unit and to establish guidelines and criteria for investigators. The Board is also planning to liaise with other agencies to examine the type of authorization required for the exchange of information and to discuss common issues with respect to investigative services.

In our view, a field investigation involving surveillance and covert inquiries should be considered only as a last resort when there is strong reason to suspect a misrepresentation by a claimant and there is clearly no other way to document the level of disability. (CS89-246)

Unconvinced by bad back evidence

On September 6, 1979, a worker tripped over an air hose and twisted his back. During the time he received compensation, an assessment by the Board's Back Evaluation and Education Program (BEEP) indicated that the worker should be fit to return to work in the latter part of November. Consequently, with no further medical evaluation by the Board, his wage loss was terminated on November 18, 1979.

The worker claimed to continue to be unable to work, and appealed the decision. Several months after he returned to work on March 31, 1980, the Board of Review announced its decision on the appeal. On the basis of an outside specialist's report, the retroactive continuation of benefits was provided, but only for the two weeks prior to December 1, 1979. Further appeals proved fruitless.

The Board based its decision on the report from the BEEP clinic, the specialist's report and a further retrospective report from a Board doctor completed in August 1980. We had difficulty finding the Commissioners' decisions supportable on the basis of these documents. The BEEP report was merely predictive in nature and, at any rate, had been superseded by the special-

ist's report. The specialist's report in turn had been superseded by a further report of the same doctor made during the first week of February 1980, stating that the worker continued to be disabled as a result of his accident. The Board doctor's report was unable to say anything definitively about the condition of the worker's back some nine months earlier.

In addition, the worker's case was supported by the findings of his own physician and yet another specialist who examined the worker in February and March of 1980.

We contended that the Board's decision to deny extended wage loss benefits could not be supported by any reasonable balancing of the evidence, and recommended that the worker's wage loss entitlement be extended beyond December 1, 1979. A great deal of time and consideration was expended by all parties to the complaint, but, in the end, the Board did not consider it appropriate to follow our recommendation. The case was closed as "not resolved". (CS89-247)

Confidentiality of informants' allegations

As a result of recommendations we made in 1987, the Board developed a policy with regard to the treatment of unsolicited information received from an identified source. Under the new policy, the existence of such information is revealed to the claimant to which it relates. The Board has also provided for anonymity for the identified source. The procedure has been included in the Rehabilitation Services and Claims Manuel. (CS89-248)

Worker demands interest on delayed payment

The Workers' Compensation Board obtained a settlement on behalf of a worker injured in a motor vehicle accident. Due to a disagreement about the settlement amount with the worker and also due to negotiations carried on by the Board with the Ministry of Social Services and Housing, which had claimed a portion of the worker's share of the settlement, the worker did not receive his money for six and a half months. He wanted the Board to pay interest for this time period.

We agreed with the worker that, whatever the reason for the delay in paying the settlement, the Board had the money over the period of time in question and had received interest on it. We therefore recommended that the requested interest be paid to the worker.

Initially the Board contended for several reasons that it was under no obligation to pay interest. Then, on the basis of a recent court decision, the Board came to the conclusion that it would pay interest in cases where it had unnecessarily delayed paying the worker his share of the settlement. However, the Board did not view this particular case as meeting that criterion. We disagreed. (CS89-249)

Widow's benefits increased

A logger who suffered a back injury on the job in 1972 was awarded a disability pension by the Workers' Compensation Board. His disability prevented him from returning to his former occupation and from earning the level of income he had been making at the time of his injury. His 1972 earnings were above the Board maximum at that date. His pension was determined on a loss-of-earnings basis and was based on a disability assessment of 20 percent of total. The fact that the pension was implemented on a loss-of-earnings basis represented an acknowledgement by the Board that the worker's earning capacity had been reduced by virtue of his injury and that he was unable to return to the job at which he was injured but was able to work at some other job at a lower income.

In 1984, after the worker was killed on another job, his wife applied for a widow's pension. Using her husband's actual earnings for the year prior to his death (approximately $16,000), the Board calculated her monthly compensation to be $369. As this figure was lower than the statutory minimum prescribed by section 17(3)(e) of the Workers Compensation Act, her widow's benefits were elevated to the minimum of $522. She complained to us that her late husband's pension was not taken into account by the WCB in calculating the amount of her widow's pension.

In our correspondence with the Board about the complaint, we pointed out that, had the worker not been previously injured and continued to earn income at a level indicated by his

past performance, his beneficiaries would be entitled to a greater amount in survivors' benefits. Section 17(3) of the Workers Compensation Act provides that dependants' benefits are to be calculated according to the compensation that would have been payable to the worker had he sustained a permanent total disability instead of dying. We were concerned that a widow/er whose spouse was partially and permanently disabled at the date of death would only be partially compensated for her or his economic loss, the extent of compensation being dependent on the effect of the disability on the worker's earnings before death.

The majority of the Commissioners concluded that this widow's situation appeared to be different from the normal circumstance of widows entitled to dependents benefits. They stated that workers whose deaths arise out of and in the course of their employment are seldom, at the date of death, in receipt of a Board pension resulting from a prior injury. In this case, there was a substantial projected loss-of-earnings pension that seemed to have been comparable to the worker's actual subsequent loss of earnings.

In view of these factors, as well as all of the other circumstances of the widow's claim, the majority of Commissioners found "special additional facts" present that would make the strict application of section 17(3) "inappropriate". They therefore decided that the complainant's widow's benefits should be recalculated under section 17(17), which provides that "where a situation arises that is not expressly covered by this section, or where some special additional facts are present that would, in the Board's opinion, make the strict application of this section inappropriate, the Board shall make rules and give decisions it considers fair, using this section as a guideline." The recalculation would take into consideration the pension awarded to the worker for his 1972 back injury.

The result of the recalculation was that the widow's benefits were increased by $79.26 per month retroactive to 1984. (CS89-250)

Reconsidered decision benefits injured nurse

A former nurse who had received a small pension award retroactive to 1974, when she had suffered a back injury, complained that the pension award had not recognized the loss of earnings she had sustained as a result of the work injury.

The Workers' Compensation Board awards pensions under a dual system: a "functional" method that recognizes the extent of physical impairment, and a "loss of earnings" method based on the difference in earning capacity before and after the injury. The worker receives an award that represents the higher of the two calculations.

Following her injury, the former nurse initially took a job as an ad manager in a retail operation. A Workers' Compensation Review Board found that the retail job was the one most suitable and available to her, yet concluded that she had not suffered a loss of earnings. That decision was questionable, since even a part-time nurse earned more than a full-time ad manager. The case was appealed to the Commissioners, who found that the woman's pension should have been awarded in 1974 rather than 1982, but also determined that the woman had left the nursing field as a matter of personal choice rather than as a result of her disability.

During the course of our investigation, we questioned the accuracy and quality of the employability assessment that formed the basis of the decision. We also drew attention to the conflicting conclusions reached by the Workers' Compensation Review Board and the Commissioners with respect to the woman's ability to find work as a nurse.

We therefore proposed that the Commissioners reconsider the issue. They agreed to do so and subsequently initiated a new employability assessment of the worker. The Commissioners directed that the new employability assessment should outline the job duties of any occupation considered "suitable", the physical requirements and qualifications of the occupation, the position's general availability, and any other relevant factors. They also directed that the worker's back disability be taken into account in any consideration of future jobs listed as suitable and available. Further, they directed that any additional training required be noted, as well as evidence as to whether or not the worker could reasonably be expected to take the required training. Such clear directions should

result in a thorough reassessment of the loss-of-earnings issue. (CS89-250)

Compensation claimant denies ability to work

A man told us he had been unable to work since an accident in 1976 when he was hit by a falling tree and knocked unconscious. In 1976 a Workers' Compensation Review Board had upheld a claims decision that the man was able to resume employment. In 1988 the Commissioners denied an extension of time or reconsideration of his case.

The preponderence of medical evidence we examined suggested that the claimant had a post-traumatic syndrome, and there was an indication of organic brain damage and varying opinion about its etiology. The worker had also obtained a medical opinion that his spinal problems were a result of the same injury.

As a result of our investigation, the Commissioners decided to refer the worker for examination by two medical review panels, the first to be composed of psychiatrists and the second of neurologists, to examine the issue of residual psychological or physical disability related to the head injury. The question of whether there were ongoing spinal problems related to the injury would then be assessed by the claims department once the panels had made their findings known. At the time of writing this report, the examination had not yet taken place. (CS89-251)

Criminal Injury Section

Resolved	8
Not resolved	0
Abandoned, withdrawn, nonjurisdictional	4
Not substantiated	0
Declined, discontinued	11
Inquiries	0
Total number of cases closed	23
Number of cases open December 31, 1989	4

In 1989, the Criminal Injury Section, as a result of an increase in the number of claims, began a review of its administrative structure. A new Criminal Injury Policy Committee was initiated. A legal administrator and an assistant registrar were hired.

The increase in staff and reorganization in the Criminal Injury Section should alleviate the current delay in adjudication of claims. We have been concerned about the impact of delay on individuals who have been victims of crime and may have physical, psychological and financial problems as a result. The discretion exists to order interim payments where the applicant is in actual financial need and it appears that compensation will probably be awarded. However, not all victims are aware that their requests for wage-loss benefits or counselling may be handled expeditiously on an interim basis. We understand that the steady and significant increase in the number of claims had burdened the small staff in the Criminal Injury Section. Additional support staff have been hired and further changes in administration should result in improvement in the delay problem.

During 1989, we had ongoing communication with the Criminal Injury Section concerning the general procedures it follows with respect to appeal information given in its decisions, disclosure of file information for the purposes of an oral inquiry or an appeal, and suggestions regarding an initial form letter explaining what delay is expected in deciding a new claim as well as progress reports in the event of further unexpected delays.

With respect to the appeal information issue, we raised a number of concerns. The Criminal Injury Section, where it paid an award of compensation, took the position that there is no appeal once the person accepts the award — a victim was only advised that a further review of the claim could be made on the basis of new evidence. We pointed out that section 22 of the Criminal Injury Compensation Act gives the victim the right to appeal the decision to an appeal committee. Further, we pointed out that a victim's acceptance of a criminal injuries award does not necessarily mean that he or she agrees with the decision. It may mean that he or she is in financial need. The Criminal Injury Section has now changed its form letter granting an award to include the information that the victim has the right to request a review of his claim on appeal by an appeal committee.

We also raised a concern that, after an oral inquiry decision, a claimant whose claim is rejected is normally advised of his or her right of appeal to a review committee. Yet there is no automatic notification of appeal rights or that an oral hearing may be requested where an officer makes a decision prior to an oral inquiry. The reason for this was that the Criminal Injury Section wished to use its discretion, as in many cases a matter can be resolved informally without an oral hearing or appeal. We were concerned, however, that if the Criminal Injury Section decided, in its discretion, that the applicant's concerns could be dealt with by way of a review, the applicant might never be told about his or her statutory appeal rights. We suggested that, in view of the provisions of section 22(2) of the Act, the choice of whether to proceed informally or by appeal should be left up to the applicant. The new form letters have now incorporated this notification.

Regarding the disclosure issue, we had proposed that Criminal Injuries develop written policy with respect to disclosure of itys claim files, applying the principles of fundamental fairness, fair hearings, privacy of third parties where required, and consistency of application. Further, we felt that applicants should be advised that disclosure can be requested.

The Board has now developed a written disclosure policy for the contents of Criminal Injury files. The policy provides that disclosure, including photocopies if requested, shall be made to the claimant or to the claimant's legal or other

representative upon request, both prior to and after the initial adjudication. It also provides that the degree to which disclosure may be made will vary according to the purpose for which adjudication is sought and whether the request is made before or after the initial adjudication. Exceptions to disclosure subsequent to initial adjudication have been kept to a minimum. The Board has also agreed to advise claimants in its decision letters that disclosure of their claim file in accordance with Board policy is available to them.

The 1988 Annual Report of the Ombudsman outlined a number of concerns related to the need for quality assurance mechanisms when counselling and therapeutic services to victims are funded by the Criminal Injury Compensation program.

Victims of crimes, including many child victims of physical and sexual assault, are often vulnerable and cannot necessarily be viewed as fully informed consumers when seeking counselling services. If dissatisfied with the nature of the counselling services being funded through the Criminal Injury Compensation program, what recourse is available to them?

If the counsellor or therapist is a registered psychologist, psychiatric nurse or social worker, complaints about an individual's practice can be pursued through the complaint mechanisms of these professional organizations. But many counsellors or therapists are not accountable to recognized professional regulatory bodies. The main recourse available to officials of the Criminal Injury Section when they receive a serious complaint about a counsellor is to terminate funding support. The victim, however, still needs help, and the counsellor may still be counselling other vulnerable clients without the scrutiny provided through appropriate mechanisms of quality control.

This office recognizes that issues of clinical quality assurance are not resolvable by the Criminal Injury Section alone. Consultation is also required with other authorities such as the Ministry of Solicitor General (on whose behalf the WCB administers the program), the Ministry of Health (which administers mental health services, the Psychologists Act and the Psychiatric Nurses Act), and the Ministry of Social Services and Housing (which is concerned about the protection of children and administers the Social Workers Act) as well as relevant professional or para-professional organizations that operate in this field.

During the latter part of 1989 we were informed that the matters raised by this office would receive priority attention from senior officials at the WCB. We have been informed by these officials that consultations within government, and then with affected professional organizations, will take place in order to seek a resolution. As the Criminal Injury Compensation program has rapidly grown to provide a significant proportion of mental health counselling services, especially to child victims of abuse, we are hopeful of significant progress towards resolution of our concerns about quality control in the coming year.

Crime victim reneges on payment of lawyer's fees

A lawyer who had represented a criminal injuries victim complained that the Criminal Injury Section had wrongfully paid compensation directly to his client. The lawyer had submitted to the Section an assignment from the victim-client stating that any compensation was to be paid directly to the lawyer. Three days before compensation was awarded, the victim wrote to the Section informing it that he had dismissed his lawyer and requesting that he be paid his compensation directly. Consequently, the Section paid the victim instead of the lawyer, and subsequently the lawyer was not paid his legal fees.

The lawyer complained to the Section and was advised that the Section owed an obligation to the victim but none to the lawyer. Further, the Section referred to section 11 of the Criminal Injury Compensation Act to support its position that it was required to pay the victim. Section 11 states that any compensation awarded or the right to it is not subject to garnishment, attachment, seizure or any other legal process and is not assignable. This was interpreted to mean that payment to the lawyer, based on an assignment, would be a violation of section 11.

The lawyer and this office agreed that the Section's interpretation of section 11 was proba-

bly correct. However, we were concerned that the Section accepted assignments and other directions to pay, without warning lawyers that if the victim-client changed his mind and asked the Section not to pay their lawyer, the Section would then disregard the assignment or direction to pay. Although a lawyer representing a criminal injury client may be expected to have read the Criminal Injury Compensation Act, by accepting the assignment a lawyer might understand that his assignment nevertheless would be honoured.

We communicated our concern to the Criminal Injury Section. The Section agreed that it should better communicate its policy with respect to its treatment of written instructions from victims' lawyers. Upon receipt of assignments or other written instructions from lawyers, the Section will reply with a form letter that clearly describes the Section policy in these matters. The letter informs the lawyer that the Section does not pay legal fees and that section 11 of the Act precludes the Section from honouring assignments of compensation. However, the Section will accept a direction to pay from the client where the award is payable to the lawyer in the client's name or the lawyer's name in trust for the client. The letter also provides the warning that such directions are not treated as irrevocable by the Section and may be withdrawn by the client at any time. In our view this letter represents a fair compromise between the lawyer's concerns and the Section's statutory and administrative responsibilities. (CS89-252)

Psychologist in limbo over fee payment

A psychologist complained that because the Criminal Injury Section had a 10-month delay in making the initial decision on the acceptability of a claim, victims in need of counselling either had to pay psychologists directly or else psychologists had to provide free counselling for 10 months, not knowing whether the claim would be accepted.

We were advised by the Criminal Injury Section that victims in dire need of counselling whose claims appear valid on the face of it and who are in financial need can ask for an interim award. This award could be used for paying for counselling prior to a decision being made by the Section regarding the validity of the claim. (CS89-253)

Workers' Compensation Review Board

Resolved	3
Not resolved	0
Abandoned, withdrawn, nonjurisdictional	2
Not substantiated	1
Declined, discontinued	40
Inquiries	4
Total number of cases closed	50
Number of cases open December 31, 1989	2

Disclosure of Review Board decisions to doctors

A nurse complained to our office about the disclosure of a Workers' Compensation Review Board appeal decision to two physicians who had disputed her claim. She felt that this disclosure was a breach of confidentiality.

We contacted the Workers' Compensation Review Board to discuss the reasons for disclosure in this case and the disclosure policy in general.

The Workers' Compensation Review Board decision to disclose the appeal decision in this case was on the basis that both physicians had provided evidence which was considered by the Panel. The current practice of the Workers' Compensation Review Board is to send a copy of the decision to all doctors who have presented, or been connected with, evidence before the Panel.

As a result of the nurse's complaint, the Workers' Compensation Review Board is reviewing its disclosure policy and has invited submissions from representatives in the field of worker's compensation prior to considering whether to make a policy change. (CS89-254)

Defining the telephone: social device or business instrument?

A retired worker who had compensable hearing loss complained that the Workers' Compensation Board had denied payment for an amplifying device for his telephone. The device had been recommended by an audiologist.

A Workers' Compensation Review Board panel denied the worker's appeal on this issue, stating that under the legislation the Workers' Compensation Board had only the responsibility to supply hearing aids and replacements. That decision appeared to overlook the provisions in the Workers Compensation Act empowering the Board to provide medical aid to cure and relieve the effects of the injury.

Following a review, the position of the Workers' Compensation Board was that the device was for social interaction on the telephone and that the worker did not require it for employment purposes. We suggested that that interpretation was too narrow and also that the use of a telephone could have significance for medical and other non-social functions.

The issue was referred to the Policy Committee of the Workers' Compensation Board, which decided that the Board should reimburse the worker for the device. (CS89-255)

Non-Jurisdictional Complaints

It appears to be the case that the existence of the Office of the Ombudsman is much more widely known among the general public in B.C. than is the case in most other provinces. This phenomenon is reflected not only in the numbers of jurisdictional complaints we investigate but also in the number of calls received on all manner of issues by our intake officers in Victoria and Vancouver every day - and by our answering machines at night. In short, our toll-free numbers — 1-800-742-6157 and 1-800-972-8972 — are constantly ringing.

Citizens are often frustrated when they have a complaint but are uncertain how or where to air it. The many geographical jurisdictions and levels of government — often with overlapping responsibilities — may be difficult to comprehend. People with complaints about other levels of government frequently turn to our office because, at the present time, Ombudsmen exist only at the provincial level. In the 23 years since Alberta became the first Canadian province to appoint an Ombudsman, every other province except P.E.I. has followed its lead. The government of Canada, despite the ever-growing numbers of Ombudsmen in countries as far-flung as Pakistan, Fiji and Botswana, has yet to pass Ombudsman legislation other than that which created the four federal "quasi-ombudsmen": the Privacy Commissioner, the Information Commissioner, the Correctional Investigator and the Commissioner of Official Languages. During 1989, the Canadian Bar Association, the Law Reform Commission of Canada, and the nine provincial Ombudsmen all recommended to the federal government the urgent need for a federal Ombudsman.

Some American cities have appointed their own Ombudsmen. In B.C., the Schedule to the Ombudsman Act includes municipalities, but has yet to be proclaimed, despite repeated resolutions by the Union of B.C. Municipalities, a resolution by the Social Credit Party and representations by the Opposition caucus expressing support for its proclamation. Consequently municipalities - like school boards, the boards of professional associations and other bodies included in the Schedule to the Act - remain outside the jurisdiction of this office.

Even when complainants are aware which agency their grievances relate to, they may have trouble finding out to whom it should be addressed. Often this office is the resource they turn to at the end of a "telephone shuffle". Such an experience may be not only frustrating but also expensive for citizens trying to telephone authorities from anywhere outside Vancouver and Victoria. Many authorities refuse to accept collect calls.

The same frustration may occur for citizens who feel aggrieved as a result of private transactions. For example, someone who feels wronged by a car dealer has the options of calling a consumers' association, a lawyer, the provincial Ministry of Labour and Consumer Services, the federal Department of Consumer and Corporate Affairs, the Motor Dealers Association, the Better Business Bureau, or any of a number of other agencies. Knowing where to start is the first problem; knowing how best to articulate the grievance and follow complaint procedures most effectively is the second. Many citizens give up at an early stage because of timidity, confusion about their rights, or frustration over the effort and expense required to take effective action.

Over the years since the Ombudsman's office was established in 1979, we have developed a fairly thorough knowledge of complaint procedures in both government and private matters, and steps have been taken to ensure that that knowledge is organized in such a manner as to be as accessible as possible to any member of our staff who fields calls from citizens who believe they may have been unfairly treated by any person, business, association, or governmental agency.

Automated access to resource referral information

As part of our computerization process, we have created a Directory of Services for children, youth and families across B.C. This directory, compiled with the assistance of numerous agencies, enables us to provide people with information about services in their area from counselling services, youth hostels, residential treatment centres to churches, transition houses and mental health centres. In addition, we have

given copies of the directory to agencies involved in the provision of referral information to the public. While keeping the directory current is a big task, we have found it to be a very useful tool in our everyday work.

Since the opening of our office in 1979, the volume of our intake has increased significantly. In an attempt to be more efficient and effective, we have recently computerized many of the functions previously done manually. While this process has accomplished what we had hoped, it has also opened new doors for us. For example, we have compiled an extensive referral and resource directory that assists us in providing information to callers whose concerns may not be within our jurisdiction to investigate. This directory enables our intake officers, with a few keystrokes, to access updated information on a great variety of helpful resources throughout the province.

In addition, we are "on-line" with grade 11 and 12 law classes, through Simon Fraser University. In a project funded by the Law Foundation, we provide information to students through two programs: the Legal Beagle and Law Forum. Through the use of a communication system, we now have access to a number of young people throughout the province. We can also use an electronic mail system to contact different agencies across North America.

Over 40 percent of the complaints and inquiries brought to our attention in 1989 had to do with matters outside the jurisdiction of our office. Their subject matter covered everything from soup to nuts, including the following:

Banks

A man who fell into serious debt approached his bank for help. The bank offered to consolidate all his loans, and he went along with this, making regular payments to the bank. Two years later, out of the blue, he received a reminder from a corporation from which he had a credit card that a certain amount of money was owing. He assumed the bank had merely made a small omission in its dealings with one of his creditors, so he was not unduly worried about this. However, after other creditors began to hound him about balances that had not been paid off, it became evident that the bank had not done what it had promised to do. We referred the caller to the Debtor Assistance Branch of the Ministry of Labour and Consumer Services for further help.

Municipalities

A proposal for construction of a ferrochromium plant adjacent to the old Bamberton Cement plant at Mill Bay was met with strident opposition from local residents. They made their concerns known at a well-attended public meeting convened by the Cowichan Valley Regional District with respect to proposed bylaws amending the zoning and official settlement plan for the area to accommodate the proposed facility.

In response to the residents' complaints, the board of the regional district voted to reject the two bylaws that had been presented at the meeting for consideration. Shortly afterwards, two new bylaws, which the residents alleged were identical in substance to the defeated bylaws, were introduced for consideration at a later public meeting. Having expended considerable energy in opposition to the proposal, some citizens complained to us, arguing that the process of re-introducing bylaws simply by renumbering the text was improper and oppressive.

The first thing we considered was the extent of our jurisdiction. As the schedule to the Ombudsman Act has not yet been proclaimed, our office has no direct investigative jurisdiction regarding the affairs of municipalities or regional districts. However, due to the high profile of the conflict and possible involvement by the Ministry of Municipal Affairs, we conducted a preliminary investigation by requesting the courtesy of the regional district in forwarding to us for review copies of the disputed bylaws, old and new.

The regional district was most co-operative, and upon review it became immediately apparent to us that the later bylaws had in fact been considerably amended to reflect concerns expressed at the first public meeting and that they had been introduced to the Board for consideration in good faith. It is worth noting that, under the Municipal Act, it would have been permissible in any event to re-introduce

bylaws of identical text and substance for consideration. The only remedy against local politicians who engage in this practice is political, unless it can be shown that such conduct directly violates an order of a court of competent jurisdiction.

Although without jurisdiction, we were able to pass the information received from the regional district on to the complainants for their review.

Hotels

A prostitute complained that she had been kicked out of her hotel room by the manager, who accused her of "doing business" in the hotel. The prostitute adamantly denied the charges.

We suggested the complainant contact the B.C. Hotels Association.

Stores

After purchasing a $1,100 kitchen set at a well-known furniture store, the complainant brought it home to find that he had miscalculated the size of his kitchen space and consequently the set was too big.

Upon returning the furniture and finding nothing else in stock that he liked, the man requested a refund. However, he was told by the store's management that all they could do was give him a credit note.

The complainant thought this was unfair as, even though the subject of returns had not been discussed directly, the store's brochure described the procedures involved in obtaining a cash refund. No mention was made in the brochure of credit notes.

We referred the complainant to the Investigations Branch of the Ministry of Labour and Consumer Services to inquire about a possible breach of consumer legislation in the store's actions.

Daycare centres

A woman whose six-year-old daughter was attending a daycare out-of-school program was concerned about the way other children were relating to her daughter. She felt that staff supervision was inadequate, and it bothered her that the program staff did not report back to her about how they planned to resolve the concerns she had raised.

We explained to the complainant that daycare and out- of-school programs are not jurisdictional and that we do not have authority under the Ombudsman Act to investigate the actions of private or non-profit agencies that are not directly funded by the provincial government. We informed the caller of the normal steps within an agency's administrative structure for resolving complaints internally.

From our perspective, it is important that all service agencies have a clearly defined internal complaints procedure posted in a conspicuous location.

Unemployment Insurance Commission

A caller from Prince George told us that he had worked for a company for a year and a half and then was suddenly laid off. When he claimed his Unemployment Insurance benefits, he found out that his former employer never had paid Unemployment Insurance premiums for him. Revenue Canada was supposed to look into this for him, but he hadn't heard back. He said he felt like everybody was giving him the royal runaround. He was afraid that he would lose his house at the end of the month because he can no longer make any payments.

As there is no federal Ombudsman, all we were able to do was to refer him to his Member of Parliament.

Buyers

A young man phoned us from Powell River. He thought he had sold his car to a friend, but when it came time to pay, the friend didn't live up to his commitment and wanted out of the deal. We suggested to the caller that he consult a lawyer to see whether there had been a binding agreement with the friend.

Sellers

A man called to express his frustration with a department store. "I went in to get some epoxy glue," he explained, "and they didn't have it." With bated breath we waited for the story to unfold. After a moment of silence, the man informed us, "I want you to know I have a

problem with that store." Apparently having got the problem off his chest and onto ours, he breathed a sigh of relief and hung up.

Dentists

A woman caller apologized for being hard to understand. She had just that day had all her teeth pulled, and it appeared that the dental surgeon had cut into her saliva gland. She was very upset, particularly as the dental surgeon was making excuses and saying that he hadn't cut her, that perhaps it was because of the clamps he used. The attending nurse had told our caller that no clamps had been used at all.

We referred the woman to the College of Dental Surgeons, which investigates complaints about its members - as do other professional associations such as the Law Society, the College of Physicians and Surgeons, and the Association of Professional Foresters. Governing bodies of professional associations are included in the Schedule to the Ombudsman Act, but as the Schedule has not yet been proclaimed, those bodies remain outside our jurisdiction. However, when we do on occasion contact them about a complaint, they have been co-operative and willing to investigate.

Lawyers

A man called to relate a grievance against a lawyer. There had been a recent death in the family, and the lawyer was the executor of the estate. The complainant told us that he had charged much more than he should have because he had overvalued certain assets that were part of the estate.

We suggested that the caller get in touch with the Law Society of British Columbia in Vancouver to ask that the lawyer's conduct be examined.

Fisheries officers

An angler accused of fishing from a bridge using the illegal technique called "snagging" complained he was being harassed by provincial officers of the Ministry of Agriculture and Fisheries. The river in question, an interior tributary to the Fraser River, was a productive salmon spawning ground.

A preliminary investigation revealed that our office was without jurisdiction to consider the matter. The alleged provincial officers were in fact representatives of the federal Ministry of Fisheries and Oceans, who have jurisdiction under the authority of the federal Fisheries Act, which deals with protection of spawning grounds which serve saltwater fisheries. The complainant was advised that we were unable to investigate. As charges under the federal Fisheries Act were pending, we could suggest no avenue of relief to the complainant other than to contest the charge in court in the normal fashion.

Federal government departments

Many MPs' offices are extremely helpful in taking the time to attempt to sort out the problems of constituents, so we often refer callers to them. In the case described below, however, an MP lobbed the ball into our court, so we made a few calls to see what could be done to direct a complainant along the most helpful path.

A Member of Parliament wrote to us on behalf of a constituent who was concerned about surface runoff water that ponded on the back portion of his property. It was claimed that the cause of this ponding was the development - building a house and raising the level of the land - of the adjacent property by Public Works Canada four years earlier. The MP explained that the issue had been and still was a matter of continuing legal civil action.

We called the local federal Department of Justice office, which confirmed that litigation was under way and that the federal government was denying liability in the action. The provincial Ministry of Environment offered to assist us by assigning a staff member to review the issue. Within the course of seven days the Ministry's report was received. It confirmed the area was a natural low area where water had ponded for years, not only on the constituent's property but also over an undeveloped right-of-way and onto the school grounds that lay beyond. Development of the adjacent property may have reduced the area of ponding, but it had not caused it. The report suggested three options: fill in the ponded area, at an estimated cost of $800; construct a dry well (common throughout the village), at an estimated cost of $2,000.00; or, if the gradient allowed, construct a storm sewer

pipe to the existing system, at an estimated cost of $5,000.

We then called the Department of Public Works director in the village. The director confirmed the area's natural low elevation and the years of ponding and noted that the suggestion to fill the property in had been made two or three years earlier. Furthermore, it was not uncommon for local builders to ask Public Works staff if any convenient areas existed in the village where fill could be disposed of.

When this inexpensive solution was suggested to the constituent, there was agreement to follow it up and eliminate what had developed into a long and no doubt expensive contested legal action.

Governments of other provinces

Quite frequently, callers raise concerns that arise in other provinces or, occasionally, in other countries. Citizens who have problems with "government" are sometimes unfamiliar with the jurisdictional boundaries between governments, and when the occasion demands it we contact other Ombudsman offices or government ministries outside B.C. to provide assistance to callers.

We were contacted a number of times by a man who was complaining about his lack of income. As we had written to him to ask for more details without receiving a reply, we called him to discuss it further.

The man explained to us that he had been trying to get workers' compensation from Alberta for many years. We offered to contact the Alberta Ombudsman office on his behalf to see if they could help. Our Alberta counterparts told us that they had been dealing with this complainant for quite some time and were in contact with the complainant about once a month. Unfortunately, the complainant had serious medical problems and had difficulty understanding what was happening.

After we talked to him about his situation in more detail, he agreed to having our office contact his local Health office to arrange for a nurse to visit him to assess his needs. We also assured him that the Alberta Ombudsman office was doing what it could to sort out his problems with the Workers' Compensation Board in that province.

Federal correctional centres

Our office regularly visits provincially run correctional institutions. As a result of these visits, many inmates and their families contact us when they have a problem in a facility. Unfortunately, we are also contacted by people who we cannot assist because they are serving a sentence in a federal institution. In one case a spouse of an inmate contacted us because her husband was experiencing many difficulties regarding medical attention, visiting privileges and transfers. After attempting to resolve the problems with the correctional system, the woman wrote to our office for assistance. While we could not provide any direct help, we did refer her to the office of the federal Correctional Investigator in Ottawa, who has the authority to investigate complaints about federal prisons.

Legal aid offices

We were contacted by a woman who was receiving assistance from legal aid in a court case. She told us that her co-defendant was hearing-impaired and needed to be represented by a lawyer who could communicate with sign language. She was upset that legal aid would not cover the cost of this service.

Although we do not have jurisdiction over the Legal Services Society, which provides legal aid services in B.C., an investigator from our office contacted the legal aid office to discuss the matter. We were informed that the Legal Services Society was prepared to provide a lawyer who could sign; the problem was that the defendants wanted one lawyer who could represent both of them. As they were co-defendants, it was decided that this might not be in their best interest, so the Legal Services Society had offered separate lawyers, one of whom could use sign language. We contacted the caller and advised her that we believed the Legal Services Society was making all efforts to ensure that she and her co-defendant would be properly represented in court.

Many people who call our office have no complaint against any agency or person. They are simply seeking information about a variety of topics, or assistance with a personal problem:

Mother seeks help for son with no income

An elderly woman who was concerned about the welfare of her middle-aged son visited our office in the hope that we could assist him. He was suffering from severe depression, lived on his own, and was making no attempt to take care of his basic needs. He was unemployed due to his state of health, did not have any income, and would not go to the local Ministry of Social Services and Housing to apply for social assistance to enable him to buy food and pay his rent. His mother was also in ill health, which limited her ability to help her son.

While the government's ability to intervene in this case was limited, we contacted the Ministry of Social Services and Housing and explained the situation. The local supervisor agreed to send someone out to the man's house and have him apply for income assistance. In addition, she agreed that, if necessary, she would assist the man's family in exploring other ways to help him.

Condominium matters

A caller had recently become the president of a strata council corporation. One of her first tasks was to set up an arbitration meeting regarding some matter that had occurred in her condominium building, and she was not sure what was required of her in such a situation. We referred her to the Condominium Homeowners' Association of B.C. in Burnaby for further assistance.

Copyright matters

An artist told us he was doing collage work for which he sometimes re-uses materials, such as photographs, created by other artists. Someone told him that these other artists might be able to sue him. He wanted to know what we thought of this matter. We suggested he call a lawyer for some advice on copyright law.

We just happen to know . . .

A woman had heard that help is available from some source to remove urea formaldehyde used as insulation materials from houses. She was wondering whether we could tell her where she could find that information. It just so happened that one of our Ombudsman Officers had removed this insulation material from her own house not long before, and she was able to give the caller the required information.

Spring forward, fall back – but when?

A bunch of employees were chewing the fat when the subject turned to the question of time — Daylight Savings Time, to be exact. The problem was that no one knew when it started. It rapidly evolved into one of those small but niggling issues that, once raised, has to be settled before anyone can achieve peace of mind and get back to work. The employees decided to make a call and get the answer.

The dilemma that then confronted them was that none of them knew who is in charge of making decrees about time changes, so they had no idea who to call. They tried the public library — a good ploy, as library staff are among the most dedicated researchers when it comes to ferreting out information for a curious citizenry. A swing and a miss — strike one.

One of the employees got the idea that the local armed forces base would have the answer. Also a good ploy — if a war starts, a nation without synchronized watches is indeed in peril. However, the armed forces were not prepared for a sinker like this. Strike two.

The employees then called a variety of other agencies, none of which had the answer. Strike three.

As a last resort, the by now frantic employees drew deep into their collective unconscious, and up came a mysterious Swedish name that the employees could hardly pronounce, let alone spell.

Meanwhile, down in Victoria, an Ombudsman intake officer waited by her phone, ready to deal with any crisis. A call came in on the toll-free line. With beating heart, she answered it, and was momentarily speechless when she heard the anguished plea over the line. She promised to search out the answer immediately and get back to the caller.

As it happened, earlier in the day the intake officer had been in the company of the Deputy Chief of Hansard — the Report of Debates of the Legislative Assembly — and thought she remembered him mentioning the subject. When she

phoned him to seek his counsel on the caller's desperate situation, he whipped out a memo that had just crossed his desk, announcing the beginning and ending times of DST — in 1990, 2 a.m. on April 1 and 2 a.m. on October 28.

Within moments, the intake officer was back on the line, providing the caller with the much-sought-after answer, and adding, to the caller's astonishment, that the time changes had been ordered under the authority of an order-in-council issued under the provisions of the Interpretation Act and that the Minister responsible was the Provincial Secretary of British Columbia.

With much relief, the employees were able to focus once again on their work, and the momentary threat to the accumulation of the gross provincial product was thwarted.

Part III
Statistics

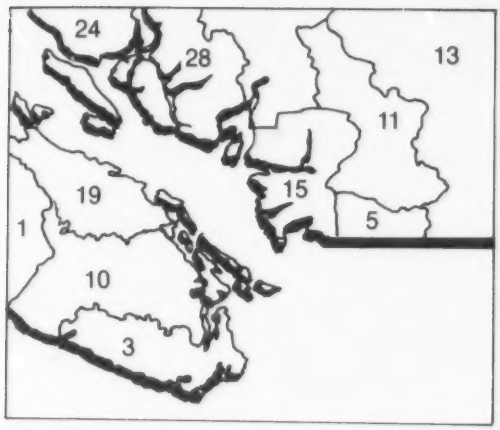
All complaint statistics included in the following tables refer to files closed in 1989 unless otherwise indicated.

Definitions of the terms used to describe the disposition of complaints are provided in the introduction to Part II of this report on page 32.

TABLE 1
Profile of Complaints, Jurisdictional Matters

Originator	*Number*	*Percent*
Aggrieved Party	6,705	91.6
Relative/Friend	558	7.6
MLA/MP	10	.2
Other	45	.6
Unknown	0	
TOTAL	7,318	100

TABLE 2
Geographical Origin of Complaints



Regional District	*Percentage of population 1989 (estimated)*	*Percentage of complaints 1989*
1. Alberni-Clayoquot	1.0	.6
2. Bulkley-Nechako	1.2	1.3
3. Capital	9.3	10.9
4. Cariboo	1.9	2.7
5. Central Fraser Valley	5.1	3.4
6. Central Kootenay	1.6	1.7
7. Central Okanagan	3.2	2.4
8. Columbia-Shuswap	1.3	1.0
9. Comox-Strathcona	2.5	2.7
10. Cowichan Valley	1.8	1.2
11. Dewdney-Alouette	2.7	3.4
12. East Kootenay	1.6	1.3
13. Fraser-Cheam	2.1	2.7
14. Fraser-Fort George	2.8	5.9
15. Greater Vancouver	44.7	35.3
16. Kitimat-Stikine	1.3	1.6
17. Kootenay Boundary	1.0	1.4
18. Mount Waddington	0.5	0.2
19. Nanaimo	2.9	3.7
20. North Okanagan	1.8	2.4
21. Central Coast	0.1	0.1
22. Okanagan-Similkameen	2.0	2.3
23. Peace River-Liard	1.7	2.5
24. Powell River	0.6	0.5
25. Skeena-Queen Charlotte	0.7	0.6
26. Squamish-Lillooet	0.7	0.6
27. Stikine	0.1	0.1
28. Sunshine Coast	0.6	0.5
29. Thompson-Nicola	3.2	5.9
Out of Province		1.1
TOTAL	100.0	100.0

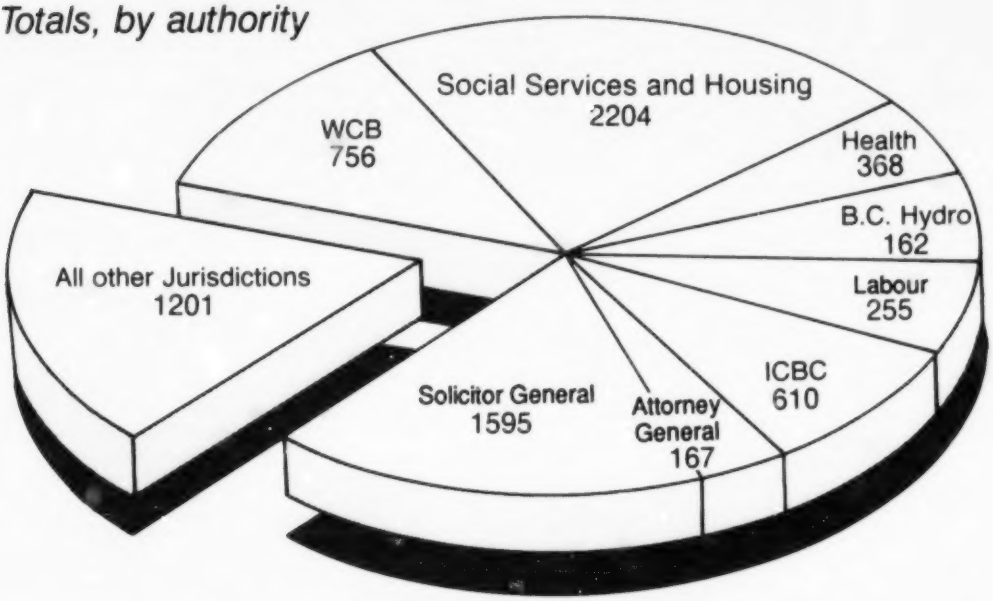
TABLE 3
Disposition of Jurisdictional Complaints

A. MINISTRIES	*Resolved*	*Not Resolved*	*Abandoned, Not an Authority, Withdrawn*	*Substantiated*	*Declined Discont.*	*Inquiries*	*Total*
Premier's Office	0	0	2	0	4	0	6
Ministers of State	0	0	0	0	0	0	0
Advanced Ed./Job Trng.	26	0	3	6	17	8	60
Agriculture and Fisheries	2	0	3	8	3	1	17
Attorney General	52	1	32	40	15	27	167
Crown Lands	15	0	8	23	2	1	49
Education	2	0	5	2	2	8	19
Energy, Mines	1	0	1	4	5	4	15
Environment	36	0	17	25	15	9	102
Finance & Corp. Rel.	26	0	19	39	12	8	104
Forests	21	1	18	22	9	3	74
Government Mgmt. Serv.	7	0	0	2	7	2	18
Health	144	1	34	71	87	31	368
Inter. Bus. & Imm.	0	0	0	0	0	0	0
Labour & Consumer Serv.	46	0	26	55	100	28	255
Mun. Aff. Rec. & Cullture	11	0	5	15	11	6	48
Native Affairs	0	0	0	1	0	0	1
Parks	1	0	1	3	0	0	5
Regional Development	2	0	1	3	2	1	9
Social Serv. & Housing	853	2	370	502	319	158	2204
Solicitor General	464	0	100	442	514	75	1595
Tourism & Prov. Sec.	5	0	1	5	5	3	19
Tr. & Highways	42	0	21	29	16	12	120
SUBTOTAL A	1756	5	667	1297	1145	385	5255
Percent	33.4%	.1%	12.7%	24.7%	21.8%	7.3%	100%
B. BOARDS, COMMISSIONS							
Agricultural Land Comm.	0	0	0	5	7	0	12
B.C. Assessment	4	0	2	8	9	1	24
B.C.B.C.	1	0	2	3	0	0	6
B.C. Coun. Hum. Rgts.	0	0	1	6	1	0	8
B.C. Ferry Corp.	3	0	1	7	4	1	16
B.C.H.M.C.	25	0	2	12	2	1	42
B.C. Hydro	27	0	13	26	92	4	162
B.C. Systems	0	0	0	1	0	0	1
B.C. Railway	0	0	2	1	4	0	7
B.C. Steamships	0	0	0	0	1	0	1
B.C. Transit	15	0	3	2	10	4	34
Colleges	2	0	2	2	0	0	6
Criminal Injury Section	8	0	4	0	11	0	23
Environmental App. Bd.	2	0	1	1	1	1	6
EXPO	0	0	1	0	0	0	1
Hospital Boards	4	0	9	5	9	3	30
I.C.B.C.	228	0	42	15	298	27	610
Industrial Rel. Board	2	0	5	8	8	3	26
Municipal Police Brds.	4	0	8	2	32	2	48*
W.C.B.	181	1	52	11	419	92	756
W.C.B. Review Board	3	0	2	1	40	4	50
Others	54	6	13	49	61	11	193
SUBTOTAL B	563	7	165	165	1009	154	2062
Percent	27.3%	.3%	8%	8%	48.9%	7.5%	100%
TOTALS A & B	2319	12	832	1462	2154	539	7318
Percent	31.7%	.1%	11.4%	20%	29.4%	7.4%	100%

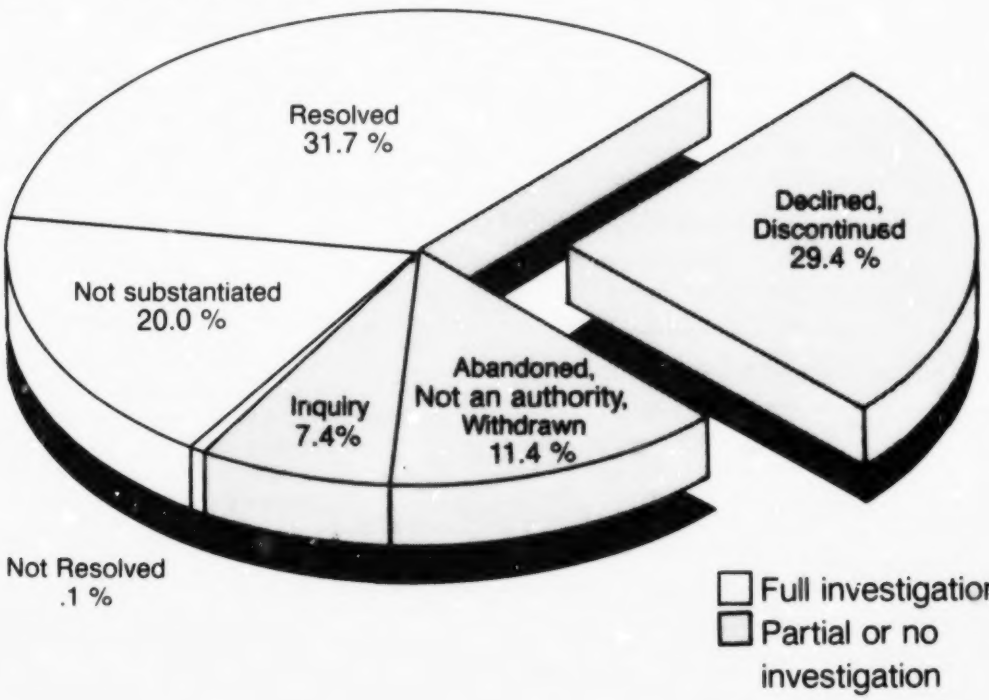
* The jurisdiction of this office to investigate complaints against municipal police boards was removed in July 1989.

Disposition of Jurisdictional Complaints, 1989
Total: 7318 Complaints

1. Totals, by authority



2. Manner of Disposition



3. Manner of Disposition, Full Investigations (3793)

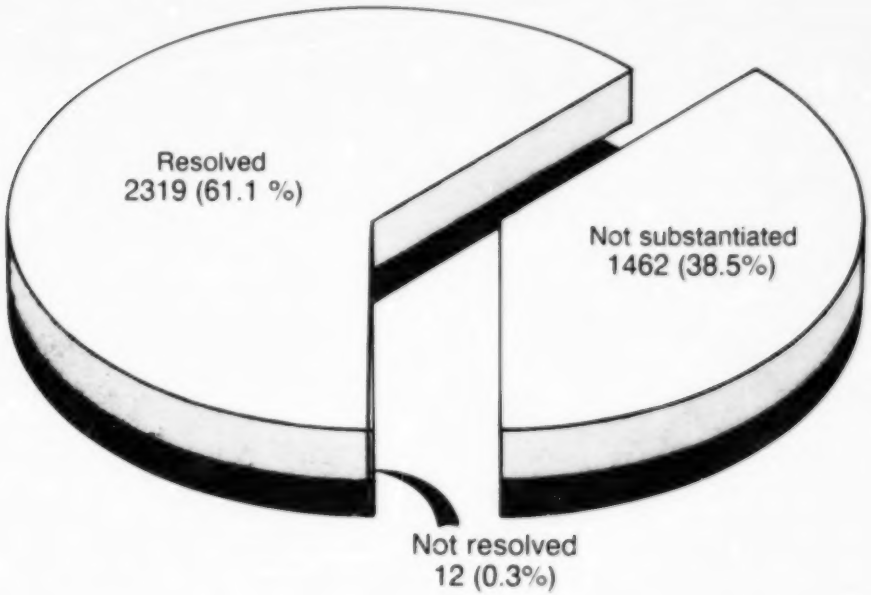


TABLE 4
Complaints against Unproclaimed Authorities
(Sections 3-11, Schedule to Ombudsman Act)

Government corporations	1
Municipalities	132
Regional districts	13
Public schools	29
Universities	2
Colleges and provincial institutes	5
Hospital boards	28
Professional/occupational associations	22
Islands Trust	0
TOTAL	232

TABLE 5
Non-Jurisdictional Complaints

Governments outside B.C.	632
Marketplace matters	3,479
Professional actions	197
Legal and court matters	395
Police matters	157
Statutory boards	17
Miscellaneous	388
TOTAL	5,265

TABLE 6
Reasons for Declining or Discontinuing Investigations

	Number	*Percent*
Inquiries	540	15.3
Abandoned by complainant	293	8.4
Withdrawn by complainant	479	13.6
Not an authority	26	.7
Not a matter of administration	58	1.6
Does not aggrieve a person	0	-
Appeal to tribunal	253	7.2
Solicitor for an authority	1	-
Over one year old	3	.1
Insufficient personal interest	8	.2
Available remedy	1266	35.9
Frivolous/vexatious	2	.1
Can consider without investigation	209	5.9
Not beneficial to complainant	297	8.4
Cost exceeds benefit	0	-
Evidence not available	90	2.6
TOTALS	3525	100

TABLE 7

Level of Impact of Resolved Complaints

Individual only	2,155
Change in practice recommended	117
Change in procedure recommended	44
Change in regulation recommended	1
Statutory amendment recommended	2
TOTAL	2,319

TABLE 8

Ombudsman Reports on Investigations, 1981-89

Year	*Reports to Cabinet* (Section 24)	*Special Reports to the Legislature* (Section 24(1))	*Public Reports* (Section 30(2))
1981	4	3	1
1982	1	2	1
1983	3	3	0
1984	5	7	1
1985	13	7	1
1986	2	0	0
1987	2	0	5
1988	0	0	6
1989	0	0	5
TOTALS	30	22	20

TABLE 9

Complaints/Inquiries Closed: Selected Authorities, 1982-1989

	1982	*1983*	*1984*	*1985*	*1986*	*1987*	*1988*	*1989*
Social Serv. & Housing	599	984	1,369	1,820	1,603	1,809	2,113	2,204
ICBC	791	810	499	424	405	515	552	610
Workers' Compensation [1]	440	482	641	737	773	929	917	806
Attorney General	419	428	988	831	997	1,345	1,394	167[2]
Transportation/Hwys.	220	263	285	249	163	245	84	120
Health	163	209	301	569	451	280	475	368
B.C. Hydro	135	159	212	365	321	237	316	162[3]

[1] Includes Workers' Compensation Review Board.

[2] The significant decrease in the number of complaints against the Ministry of Attorney General was primarily the result of the transfer to the Ministry of Solicitor General of several divisions, including the Corrections Branch.

[3] A significant decrease in the number of complaints against the B.C. Hydro and Power Authority was recorded following the establishment by B.C. Hydro of an internal complaint investigation mechanism and standardized collection procedures.

TABLE 10

Jurisdictional and Non-Jurisdictional Complaints, 1979-89

Year	*Total Complaints Closed*	*Number Outside Jurisdiction*	*Number Within Jurisdiction*	*Percent Within Jurisdiction*
1979-80	4,197	2,309	1,888	44.9
1981	4,765	2,008	2,757	57.8
1982	7,979	3,851	4,128	51.7
1983	9,762	5,156	4,606	47.2
1984	11,343	5,636	5,707	50.3
1985	12,018	6,184	5,834	48.5
1986	11,185	5,746	5,439	48.6
1987	12,406	6,127	6,279	50.6
1988	13,704	6,561	7,143	52.1
1989	12,815	5,497	7,318	57.1

TABLE 11

Disposition of Jurisdictional Complaints by Number, 1979-89

	79-80	1981	1982	1983	1984	1985	1986	1987	1988	1989
Not resolved	0	74	18	20	51	29	25	8	3	12
Resolved/Rectified	565	781	1,304	1,556	2,053	2,267	1,833	2,231	2,324	2,319
Not substantiated	459	682	880	1,123	1,264	1,245	1,178	1,332	1,337	1,462
Discont/Declined	864	1,220	1,926	1,907	2,339	2,293	1,936	1,954	2,839	2,154
Ab./Withdr./Not an auth.										832
Inquiries							467	754	640	539
TOTALS	1,888	2,757	4,128	4,606	5,707	5,834	5,439	6,279	7,143	7,318

Disposition of Jurisdictional Complaints 1984 - 1989: Numbers of Complaints Closed

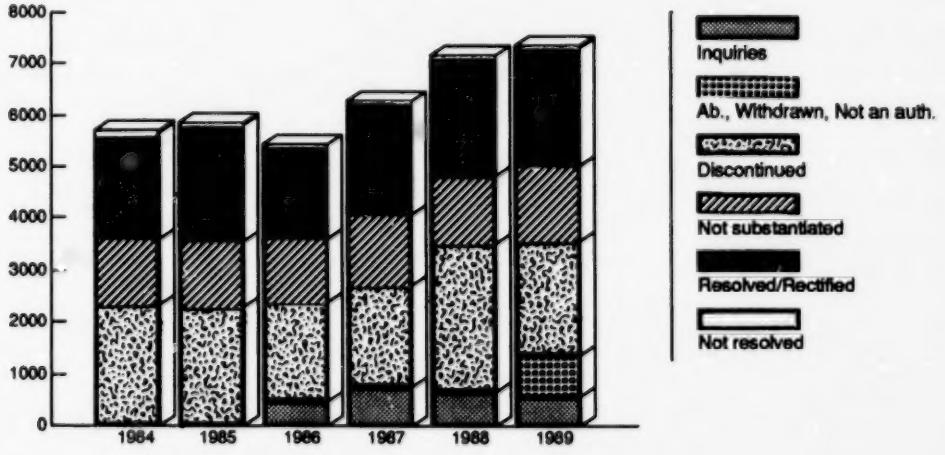


TABLE 12

Disposition of Jurisdictional Complaints by Percentage, 1979-89

	79-80	*1981*	*1982*	*1983*	*1984*	*1985*	*1986*	*1987*	*1988*	*1989*
Not Resolved	0	3	1	1	1	1	.4	.1	.1	.2
Res/Rect.	30	29	31	34	36	39	33.6	35.6	32.5	31.7
Not substantiated	24	25	21	24	22	21	22.0	21.2	18.7	20.0
Discont/Decl.	46	44	47	41	41	39	36.0	31.1	39.7	29.4
Ab./Withdr./Not an authority										11.4
Inquiries							8.0	12.0	9.0	7.3

TABLE 13

Complaints/Inquiries Received and Closed, 1979-89

Year	*Complaints Received*	*Percent Increase/Decrease over Previous Year*	*Complaints Closed*	*Percent Increase/Decrease over Previous Year*
1979	924		256	
1980	3,840		3,941	
1981	4.935	28.5	4,765	20.9
1982	8,179	65.7	7,979	67.5
1983	9,534	16.6	9,762	22.3
1984	11,462	20.2	11,343	16.2
1985	11,308	-1.3	12,018	5.9
1986	11,012	-2.6	11,185	-6.9
1987	12,712	15.4	12,406	10.9
1988	14,184	8.9	13,704	9.0
1989	12,936	-8.8	12,815	-6.5
TOTALS	101,026		100,174	

New Complaints Received, 1979-1989

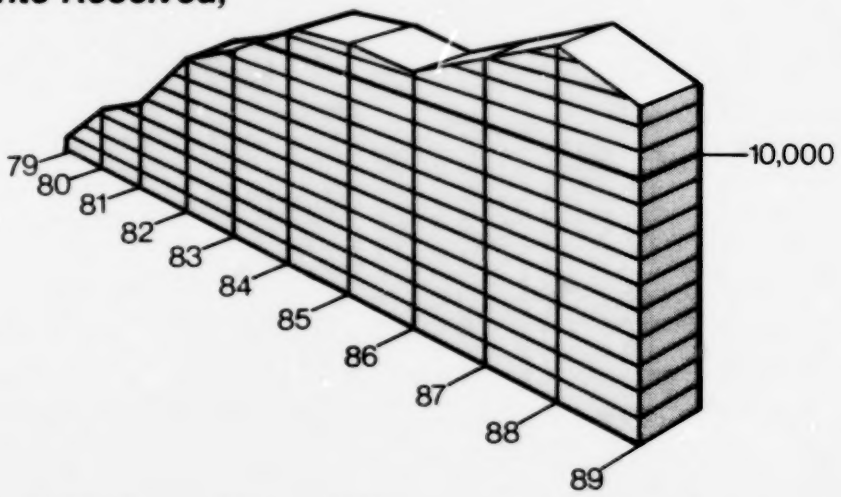


TABLE 14
1989 Caseload

1979-1988 complaints carried into 1989	1,451
New complaints received in 1989	12,936
TOTAL	14,387
Complaints closed in 1989	12,815
Complaints under investigation at year end	1,572
TOTAL	14,387

Staff as at December 31, 1989

Amren, R.W. Bergen
Anderson, Patricia (Pat)
Arnold, Elizabeth
Berry, Susan P.
Beyer, L. Eleonore
Brown, Cleta
Davis, David
Dennison, Sid
Diersch, Eileen
Desilets, Helene
Dixon, Lorrainne A.
Forth, Angela B.
Gardiner, Thomas (Scotty) M.
Greer, David
Hadley, Sonja E.
Hayward, Dorothy
Henders, Keith C.
Heyman, Susan L.
Humphreys, Barbara G.
Illington, Joy
Jones, Eric
Kemeny, Carol
Kilshaw, Karen M.
Labrick, Elisabeth
Madison, Christine
Nicholls, Elizabeth
Owen, Stephen
Parfitt, D. Brent
Phillips, R. Delmar (Del)
Ronneseth, Lynne
Ross, Michael
Schaufele, Irita
Skeldon, Dorothy
Skinner, Michael T.
Smalley, Leora D.
Spangelo, Cindy
Staples, David
Summersgill, William (Bill) M.
Tweddle, Rita
Williams, Holly E. (LOA)

OMBUDSMAN ACT

[Ss. 3 to 11 of Schedule not in force; see *s. 35]*

CHAPTER 306

Interpretation

1. In this Act "authority" means an authority set out in the Schedule and includes members and employees of the authority.

1977-58-1.

Appointment of Ombudsman

2. (1) The Lieutenant Governor shall, on the recommendation of the Legislative Assembly, appoint as an officer of the Legislature an Ombudsman to exercise the powers and perform the duties assigned to him under this Act.

(2) The Legislative Assembly shall not recommend a person to be appointed Ombudsman unless a special committee of the Legislative Assembly has unanimously recommended to the Legislative Assembly that the person be appointed.

1977-58-2(1,2).

Term of office

3. (1) The Ombudsman shall be appointed for a term of 6 years and may be reappointed in the manner provided in section 2 for further 6 year terms.

(2) The Ombudsman shall not hold another office or engage in other employment.

1977-58-2(3,4).

Remuneration

4. (1) The Ombudsman shall be paid, out of the consolidated revenue fund, a salary equal to the salary paid to the chief judge of the Provincial Court of British Columbia.

(1.1) The Ombudsman holding office when this subsection comes into force shall, during the remainder of his current term of office, be paid the greater of

(a) the salary he is actually receiving on December 1, 1987, or

(b) the salary prescribed in subsection (1).

(2) The Ombudsman shall be reimbursed for reasonable travelling and out of pocket expenses necessarily incurred by him in discharging his duties.

1977-58-2(5,6); 1987-60-20.

Pension

5. (1) Subject to this section, the *Pension (Public Service) Act* applies to the Ombudsman.

(2) An Ombudsman who retires, is retired or removed from office after at least 10 years' service shall be granted an annual pension payable on or after attaining age 60.

(3) Where an Ombudsman who has served at least 5 years is removed from office due to physical or mental disability, section 19 of the *Pension (Public Service) Act* applies and he is entitled to a superannuation allowance commencing the first day of the month following his removal.

(4) Where an Ombudsman who has served at least 5 years dies in office, section 20 of the *Pension (Public Service) Act* applies and the surviving spouse is entitled to a superannuation allowance commencing the first day of the month following the death.

(5) Where calculating the amount of a superannuation allowance under this section

(a) each year of service as Ombudsman shall be counted as 1 1/2 years of pensionable service.

(b) [Repealed 1988-52-2.]

(6) Subsection (5) does not apply to the calculation under section 6 (5) of the *Pension (Public Service) Act*.

1977-58-2(7 to 11); 1985-14-4; 1988-52-2.

Resignation, removal or suspension

6. (1) The Ombudsman may at any time resign his office by written notice to the Speaker of the Legislative Assembly or to the Clerk of the Legislative Assembly if there is no Speaker or if the Speaker is absent from the Province.

(2) On the recommendation of the Legislative Assembly, based on cause or incapacity, the Lieutenant Governor shall, in accordance with the recommendation,

(a) suspend the Ombudsman, with or without salary; or

(b) remove the Ombudsman from his office.

(3) Where

(a) the Ombudsman is suspended or removed;

(b) the office of Ombudsman becomes vacant for a reason other than by operation of paragraph (f); or

(c) the Ombudsman is temporarily ill or temporarily absent for another reason

the Lieutenant Governor shall, on the recommendation of the Legislative Assembly, appoint an acting Ombudsman to hold office until

(d) the appointment of a new Ombudsman under section 2;

(e) the end of the period of suspension of the Ombudsman;

(f) the expiry of 30 sitting days after the commencement of the next session of the Legislature; or

(g) the return to office of the Ombudsman from his temporary illness or absence,

whichever occurs first.

(4) When the Legislature is not sitting and is not ordered to sit within the next 5 days the Lieutenant Governor in Council may suspend the Ombudsman from his office, with or without salary, for cause or incapacity, but the suspension shall not continue in force after the expiry of 30 sitting days.

1977-58-3.

Lieutenant Governor in Council may appoint acting Ombudsman

7. (1) Where

(a) the Ombudsman is suspended or removed; or

(b) the office of Ombudsman becomes vacant for a reason other than by operation of subsection (2) (c),

when the Legislature is sitting but no recommendation under section 2 or 6 (3) is made by the Legislative Assembly before the end of that sitting or before an adjournment of the Legislature exceeding 5 days, or

(c) the Ombudsman is suspended or the office of Ombudsman becomes vacant when the Legislature is not sitting and is not ordered to sit within the next 5 days; or

(d) the Ombudsman is temporarily ill or temporarily absent for another reason,

the Lieutenant Governor in Council may appoint an acting Ombudsman.

(2) The appointment of an acting Ombudsman under subsection (1) terminates

(a) on the appointment of a new Ombudsman under section 2;

(b) at the end of the period of suspension of the Ombudsman;

(c) immediately after the expiry of 30 sitting days after the day on which he was appointed;

(d) on the appointment of an acting Ombudsman under section 6 (3); or

(e) on the return to office of the Ombudsman from his temporary illness or absence,

whichever occurs first.

1977-58-4.

Staff

8. (1) The Ombudsman may, in accordance with the *Public Sevice Act*, appoint employees necessary to enable him to perform his duties.

(2) For the purposes of the application of the *Public Service Act* to this section, the Ombudsman shall be deemed to be a deputy minister.

(3) [Repealed 1985-15-40, effective March 2, 1987 (B.C. Reg. 248/86).]

(4) The Ombudsman may make a special report to the Legislative Assembly where he believes the

(a) amounts and establishment provided for the office of the Ombudsman in the Estimates; or

(b) services provided to him by the Government Personnel Services Division

are inadequate to enable him to fulfil his duties.

1977-58-5; 1985-15-40, effective March 2, 1987 (B.C. Reg. 248/86).

Confidentiality

9. (1) Before beginning to perform his duties, the Ombudsman shall take an oath before the Clerk of the Legislative Assembly that he will faithfully and impartially exercise the powers and perform the duties of his office, and that he will not, except where permitted by this Act, divulge any information received by him under this Act.

(2) A person on the staff of the Ombudsman shall, before he begins to perform his duties, take an oath before the Ombudsman that he will not, except where permitted by this Act, divulge any information received by him under this Act, and for the purposes of this subsection the Ombudsman is a commissioner for taking affidavits for British Columbia.

(3) The Ombudsman and every person on his staff shall, subject to this Act, maintain confidentiality in respect of all matters that come to their knowledge in the performance of their duties under this Act.

(4) Neither the Ombudsman nor a person holding an office or appointment under the Ombudsman shall give or be compelled to give evidence in a court or in proceedings of a judicial nature in respect of anything coming to his knowledge in the exercise of his duties under this Act, except to enforce his powers of investigation, compliance with this Act or with respect to a trial of a person for perjury.

(5) An investigation under this Act shall be conducted in private unless the Ombudsman considers that there are special circumstances in which public knowledge is essential in order to further the investigation.

(6) Notwithstanding this section, the Ombudsman may disclose or authorize a member of his staff to disclose a matter that, in his opinion, is necessary to

(a) further an investigation;

(b) prosecute an offence under this Act; or

(c) establish grounds for his conclusions and recommendations made in a report under this Act.

1977-58-6

Powers and duties of Ombudsman in matters of administration

10. (1) The Ombudsman, with respect to a matter of administration, on a complaint or on his own initiative, may investigate

(a) a decision or recommendation made;

(b) an act done or omitted; or

(c) a procedure used

by an authority that aggrieves or may aggrieve a person.

(2) The powers and duties conferred on the Ombudsman may be exercised and performed notwithstanding a provision in an Act to the effect that

(a) a decision, recommendation or act is final;

(b) no appeal lies in respect of it; or

(c) no proceeding or decision of the authority whose decision, recommendation or act it is shall be challenged, reviewed, quashed or called into question.

(3) The Legislative Assembly or any of its committees may at any time refer a matter to the Ombudsman for investigation and report and the Ombudsman shall

(a) subject to any special directions, investigate the matter referred so far as it is within his jurisdiction; and

(b) report back as he thinks fit, but sections 22 to 25 do not apply in respect of an investigation or report made under this subsection.

1977-58-7.

Jurisdiction of Ombudsman

11. (1) This Act does not authorize the Ombudsman to investigate a decision, recommendation, act or omission

(a) in respect of which there is under an enactment a right of appeal or objection or a right to apply for a review on the merits of the case to a court or tribunal constituted by or under an enactment, until after that right of appeal, objection or application has been exercised in the particular case or until after the time prescribed for the exercise of that right has expired; or

(b) of a person acting as a solicitor for an authority or acting as counsel to an authority in relation to a proceeding.

(2) The Ombudsman may investigate conduct occurring prior to the commencement of this Act.

(3) Where a question arises as to the Ombudsman's jurisdiction to investigate a case or class of cases under this Act, he may apply to the Supreme Court for a declaratory order determining the question.

1977-58-8.

Complaint to Ombudsman

12. (1) A complaint under this Act may be made by a person or group of persons.

(2) A complaint shall be in writing.

(3) Notwithstanding any enactment, where a communication written by or on behalf of a person confined in a federal or Provincial correctional institution or to a hospital or facility operated by or under the direction of an authority, or by a person in the custody of another person for any reason, is addressed to the Ombudsman, it shall be mailed or forwarded immediately, unopened, to the Ombudsman by the person in charge of the institution, hospital or facility in which the writer is confined or by the person having custody of the person; and a communication from the Ombudsman to such a person shall be forwarded to that person in a like manner.

1977-58-9.

Refusal to investigate

13. The Ombudsman may refuse to investigate or cease investigating a complaint where in his opinion

(a) the complainant or person aggrieved knew or ought to have known of the decision, recommendation, act or omission to which his complaint refers more than one year before the complaint was received by the Ombudsman;

(b) the subject matter of the complaint primarily affects a person other than the complainant and the complainant does not have sufficient personal interest in it;

(c) the law or existing administrative procedure provides a remedy adequate in the circumstances for the person aggrieved, and if the person aggrieved has not availed himself of the remedy, there is no reasonable justification for his failure to do so;

(d) the complaint is frivolous, vexatious, not made in good faith or concerns a trivial matter;

(e) having regard to all the circumstances, further investigation is not necessary in order to consider the complaint; or

(f) in the circumstances, investigation would not benefit the complainant or person aggrieved.

1977-58-10.

Ombudsman to notify authority

14. (1) If the Ombudsman investigates a matter, he shall notify the authority affected and any other person he considers appropriate to notify in the circumstances.

(2) The Ombudsman may at any time during or after an investigation consult with an authority to attempt to settle the complaint, or for any other purpose.

(3) Where before the Ombudsman has made his decision respecting a matter being investigated he receives a request for consultation from the authority, he shall consult with the authority.

1977-58-11.

Power to obtain information

15. (1) The Ombudsman may receive and obtain information from the persons and in the manner he considers appropriate, and in his discretion may conduct hearings.

(2) Without restricting subsection (1), but subject to this Act, the Ombudsman may

(a) at any reasonable time enter, remain on and inspect all of the premises occupied by an authority, converse in private with any person there and otherwise investigate matters within his jurisdiction;

(b) require a person to furnish information or produce a document or thing in his possession or control that relates to an investigation at a time and place he specifies, whether or not that person is a past or present member or employee of an authority and whether or not the document or thing is in the custody or under the control of an authority;

(c) make copies of information furnished or a document or thing produced under this section;

(d) summon before him and examine on oath any person who the Ombudsman believes is able to give information relevant to an investigation, whether or not that person is a complainant or a member or employee of an authority, and for that purpose may administer an oath; and

(e) receive and accept, on oath or otherwise, evidence he considers appropriate, whether or not it would be admissible in a court.

(3) Where the Ombudsman obtains a document or thing under subsection (2) and the authority requests its return, the Ombudsman shall within 48 hours after receiving the request return it to the authority, but he may again require its production in accordance with this section.

1977-58-12.

Opportunity to make representations

16. Where it appears to the Ombudsman that there may be sufficient grounds for making a report or recommendation under this Act that may adversely affect an authority or person, the Ombudsman shall inform the authority or person of the grounds and shall give the authority or person the opportunity to make representations, either orally or in writing at the discretion of the Ombudsman, before he decides the matter.

1977-58-13.

Executive Council proceedings

17. Where the Attorney General certifies that the entry on premises, the giving of information, the answering of a question or the production of a document or thing might

(a) interfere with or impede the investigation or detection of an offence;

(b) result in or involve the disclosure of deliberations of the Executive Council; or

(c) result in or involve the disclosure of proceedings of the Executive Council or a committee of it, relating to matters of a secret or confidential nature and that the disclosure would be contrary or prejudicial to the public interest,

the Ombudsman shall not enter the premises and shall not require the information or answer to be given or the document or thing to be produced, but shall report the making of the certificate to the Legislative Assembly not later than in his next annual report.

1977-58-14.

Application of other laws respecting disclosure

18. (1) Subject to section 17, a rule of law that authorizes or requires the withholding of a document or thing, or the refusal to disclose a matter in answer to a question, on the ground that the production or disclosure would be injurious to the public interest does not apply to production of the document or thing or the disclosure of the matter to the Ombudsman.

(2) Subject to section 17 and to subsection (4), a person who is bound by an enactment to maintain confidentiality in relation to or not to disclose any matter shall not be required to supply any information to or answer any question put by the Ombudsman in relation to that matter, or to produce to the Ombudsman any document or thing relating to it, if compliance with that requirement would be in breach of the obligation of confidentiality or nondisclosure.

(3) Subject to section 17 but notwithstanding subsection (2), where a person is bound to maintain confidentiality in respect of a matter only by virtue of an oath under the *Public Service Act* or a rule of law referred to in subsection (1), he shall disclose the information, answer questions and produce documents or things on the request of the Ombudsman.

(4) Subject to section 17, after receiving a complainant's consent in writing, the Ombudsman may require a person described in subsection (2) to, and that person shall, supply information, answer any question or produce any document or thing required by the Ombudsman that relates only to the complainant.

1977-58-15.

Privileged information

19. (1) Subject to section 18, a person has the same privileges in relation to giving information, answering questions or producing documents or things to the Ombudsman as that person would have with respect to a proceeding in a court.

(2) Except on the trial of a person for perjury or for an offence under this Act, evidence given by a person in proceedings before the Ombudsman and evidence of the existence of the proceedings is inadmissible against that person in a court or in any other proceeding of a judicial nature.

1977-58-16.

Witness and information expenses

20. (1) A person examined under section 15 (2) (d) is entitled to the same fees, allowances and expenses as if he were a witness in the Supreme Court.

(2) Where a person incurs expenses in complying with a request of the Ombudsman for production of documents or other information, the Ombudsman may in his discretion reimburse that person for reasonable expenses incurred that are not covered under subsection (1).

1977-58-17.

Where complaint not substantiated

21. Where the Ombudsman decides not to investigate or further investigate a complaint, or where at the conclusion of an investigation the Ombudsman decides that

the complaint has not been substantiated, he shall as soon as is reasonable notify in writing the complainant and the authority of that decision and the reasons for it and may indicate any other recourse that may be available to the complainant.

1977-58-18.

Procedure after investigation

22. (1) Where, after completing an investigation, the Ombudsman believes that

(a) a decision, recommendation, act or omission that was the subject matter of the investigation was

(i) contrary to law;

(ii) unjust, oppressive or improperly discriminatory;

(iii) made, done or omitted pursuant to a statutory provision or other rule of law or practice that is unjust, oppressive or improperly discriminatory;

(iv) based in whole or in part on a mistake of law or fact or on irrelevant grounds or consideration;

(v) related to the application of arbitrary, unreasonable or unfair procedures; or

(vi) otherwise wrong;

(b) in doing or omitting an act or in making or acting on a decision or recommendation, an authority

(i) did so for an improper purpose;

(ii) failed to give adequate and appropriate reasons in relation to the nature of the matter; or

(iii) was negligent or acted improperly; or

(c) there was unreasonable delay in dealing with the subject matter of the investigation,

the Ombudsman shall report his opinion and the reasons for it to the authority and may make the recommendation he considers appropriate.

(2) Without restricting subsection (1), the Ombudsman may recommend that

(a) a matter be referred to the appropriate authority for further consideration;

(b) an act be remedied;

(c) an omission or delay be rectified;

(d) a decision or recommendation be cancelled or varied;

(e) reasons be given;

(f) a practice, procedure or course of conduct be altered;

(g) an enactment or other rule of law be reconsidered; or

(h) any other steps be taken.

1977-58-19.

Authority to notify Ombudsman of steps taken

23. (1) Where the Ombudsman makes a recommendation under section 22, he may request that the authority notify him within a specified time of the steps that have been or are proposed to be taken to give effect to his recommendation, or if no steps have been or are proposed to be taken, the reasons for not following the recommendation.

(2) Where, after considering a response made by an authority under subsection (1) the Ombudsman believes it advisable to modify or further modify his

recommendation, he shall notify the authority of his recommendation as modified and may request that the authority notify him of the steps that have been or are proposed to be taken to give effect to the modified recommendation, or if no steps have been or are proposed to be taken, of the reasons for not following the modified recommendation.

1977-58-20.

Report of Ombudsman where no suitable action taken

24. (1) If within a reasonable time after a request by the Ombudsman has been made under section 23 no action is taken that the Ombudsman believes adequate or appropriate, he may, after considering any reasons given by the authority, submit a report of the matter to the Lieutenant Governor in Council and, after that, may make such report to the Legislative Assembly respecting the matter as he considers appropriate.

(2) The Ombudsman shall attach to a report under subsection (1) a copy of his recommendation and any response made to him under section 23, but he shall delete from his recommendation and from the response any material that would unreasonably invade any person's privacy, and may in his discretion delete material revealing the identity of a member, officer or employee of an authority.

1977-58-21.

Complainant to be informed

25. (1) Where the Ombudsman makes a recommendation pursuant to section 22 or 23 and no action that the Ombudsman believes adequate or appropriate is taken within a reasonable time, he shall inform the complainant of his recommendation and make such additional comments as he considers appropriate.

(2) The Ombudsman shall in every case inform the complainant within a reasonable time of the result of the investigation.

1977-58-22.

No hearing as of right

26. Except as provided in this Act, a person is not entitled as of right to a hearing before the Ombudsman.

1977-58-23.

Ombudsman not subject to review

27. Proceedings of the Ombudsman shall not be challenged, reviewed or called into question by a court, except on the ground of lack or excess of jurisdiction.

1977-58-24.

Proceedings privileged

28. (1) Proceedings do not lie against the Ombudsman or against a person acting under the authority of the Ombudsman for anything he may in good faith do, report or say in the course of the exercise or purported exercise of his duties under this Act.

(2) For the purposes of any Act or law respecting libel or slander,

(a) anything said, all information supplied and all documents and things produced in the course of an inquiry or proceedings before the

Ombudsman under this Act are privileged to the same extent as if the inquiry or proceedings were proceedings in a court; and

(b) a report made by the Ombudsman and a fair and accurate account of the report in a newspaper, periodical publication or broadcast is privileged to the same extent as if the report of the Ombudsman were the order of a court.

1977-58-25.

Delegation of powers

29. (1) The Ombudsman may in writing delegate to any person or class of persons any of his powers or duties under this Act, except the power

(a) of delegation under this section;

(b) to make a report under this Act; and

(c) to require a production or disclosure under section 18 (1).

(2) A delegation under this section is revocable at will and does not prevent the exercise at any time by the Ombudsman of a power so delegated.

(3) A delegation may be made subject to terms the Ombudsman considers appropriate.

(4) Where the Ombudsman by whom a delegation is made ceases to hold office, the delegation continues in effect so long as the delegate continues in office or until revoked by a succeeding Ombudsman.

(5) A person purporting to exercise power of the Ombudsman by virtue of a delegation under this section shall, when requested to do so, produce evidence of his authority to exercise the power.

1977-58-26.

Annual and special reports

30. (1) The Ombudsman shall report annually on the affairs of his office to the Speaker of the Legislative Assembly, who shall cause the report to be laid before the Legislative Assembly as soon as possible.

(2) The Ombudsman, where he considers it to be in the public interest or in the interest of a person or authority, may make a special report to the Legislative Assembly or comment publicly respecting a matter relating generally to the exercise of his duties under this Act or to a particular case investigated by him.

1977-58-27.

Offences

31. A person commits an offence who,

(a) without lawful justification or excuse, intentionally obstructs, hinders or resists the Ombudsman or another person in the exercise of his power or duties under this Act;

(b) without lawful justification or excuse, refuses or intentionally fails to comply with a lawful requirement of the Ombudsman or another person under this Act;

(c) intentionally makes a false statement to or misleads or attempts to mislead the Ombudsman or another person in the exercise of his powers or duties under this Act; or

(d) violates an oath taken under this Act.

1977-58-28.

Other remedies

32. The provisions of this Act are in addition to the provisions of any other enactment or rule of law under which

(a) a remedy or right of appeal or objection is provided; or

(b) a procedure is provided for inquiry into or investigation of a matter,

and nothing in this Act limits or affects that remedy, right of appeal or objection or procedure.

1977-58-29.

Rules

33. (1) The Legislative Assembly may on its own initiative or on the recommendation of the Lieutenant Governor in Council make rules for the guidance of the Ombudsman in the exercise of his powers and performance of his duties.

(2) Subject to this Act and any rules made under subsection (1), the Ombudsman may determine his procedure and the procedure for the members of his staff in the exercise of the powers conferred and the performance of his duties imposed by this Act.

1977-58-30.

Additions to Schedule

34. The Lieutenant Governor in Council may by order add authorities to the Schedule.

1977-58-31.

Commencement

35. Sections 3 to 11 of the Schedule come into force by regulation of the Lieutenant Governor in Council.

1977-58-34; 1983-10-25, effective October 26, 1983 (B.C. Reg. 393/83).

SCHEDULE

AUTHORITIES

1. Ministries of the Province.

2. A person, corporation, commission, board, bureau or authority who is or the majority of the members of which are, or the majority of the members of the board of management or board of directors of which are,

(a) appointed by an Act, minister, the Lieutenant Governor in Council;

(b) in the discharge of their duties, public officers or servants of the Province; or

(c) responsible to the Province.

[3. A corporation the ownership of which or a majority of the shares of which is vested in the Province.

4. Municipalities.

5. Regional districts.

6. The Islands Trust established under the *Islands Trust Act*.

7. Public schools, colleges and boards of school trustees as defined in the *School Act* and college councils established under that Act.

8. Universities as defined in the *University Act*.

9. Institutions as defined in the *College and Institute Act*.

10. Hospitals and boards of management of hospitals as defined in the *Hospital Act*.

11. Governing bodies of professional and occupational associations that are established or continued by an Act.]

1977-58-Sch.; *[bracketed sections 3 to 11 to be proclaimed]*; 1983-3-34, effective December 22, 1983 (B.C. Reg. 486/83); 1987-48-14.